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The Collected Historical Works of
Sir Francis Palgrave, K.H.

In Ten Volumes

Volume Six

THE RISE AND PROGRESS OF THE ENGLISH COMMONWEALTH

ANGLO-SAXON PERIOD

IN TWO PARTS

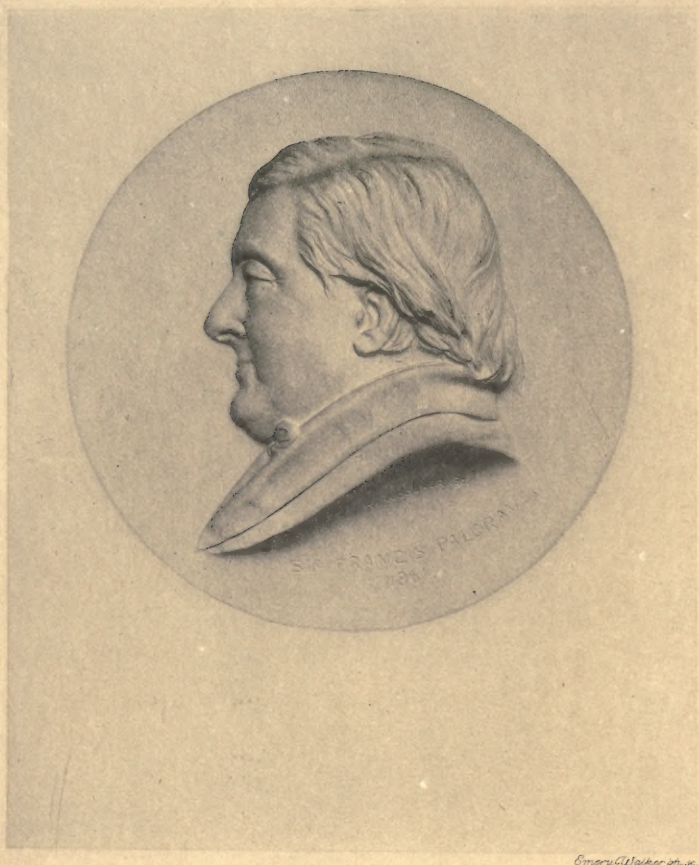
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Sir Francis Palgrave, K.H.
1861
From a medallion by Thomas Woolner, R.A.

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OF SIR FRANCIS PALGRAVE, K.H.

edited by his son

SIR R. H. INGLIS PALGRAVE, F.R.S.

Vol. 6.

THE RISE AND PROGRESS OF THE ENGLISH COMMONWEALTH

ANGLO-SAXON PERIOD

PART I

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CONTENTS

	PAGE
Note	[vii]
List of Errata	[viii]
Author's Preface	iii
Table of Contents of Part I	vii
Part I. The English Commonwealth . .	1
Editor's Notes	578
Index	609

FRONTISPIECE

Portrait of Sir Francis Palgrave, from a Medallion by Thomas Woolner, R.A., 1861.

NOTE

The Rise and Progress of the English Commonwealth, now republished as volumes VI and VII of this series, is regarded by many historians as Sir Francis Palgrave's greatest written work. It contains the fullest and most definite expression of his views on the history of the early institutions of our country and was a contribution to their study of very considerable value.

The two volumes were completely ready for publication at the time of Sir Inglis Palgrave's death with the exception of the indexes, but they had to be set aside until volumes III and IV, which were in a less advanced state, could be finished.

Sir Inglis Palgrave had wished cordially to thank Dr Joseph Hall for his advice and assistance in the general preparation of the volumes, for revising the translations of the long passages from the Latin Chronicles quoted by the author, for checking the many references to chroniclers and historians and ancient legal codes, and for writing the notes to Part II (volume VII) and many of those to Part I (volume VI). I am glad to have this opportunity of expressing his thanks also to Dr Frederick Bradshaw, Reader in Modern History, Armstrong College, Newcastle-upon-Tyne, for his notes to Part I, to Mr Emery Walker for his excellent reproduction of Thomas Woolner's medallion-portrait of the author which forms the frontispiece to volume VI, and especially to Miss E. A. Skelton for her indefatigable work in preparing the volumes for the press in accordance with Sir Inglis Palgrave's instructions. With these acknowledgments I should much like to associate myself.

GEOFFREY PALGRAVE BARKER.

THE ATHENAEUM,
LONDON,
August, 1921.

ERRATA

Page 391, line 33, *for* p. 215 *read* p. 115

,, 516, ,, 11 (margin), *for* above *read* below

THE

RISE AND PROGRESS

OF THE

ENGLISH COMMONWEALTH.

ANGLO-SAXON PERIOD.

CONTAINING

THE ANGLO-SAXON POLICY, AND THE INSTITUTIONS ARISING OUT OF LAWS AND USAGES WHICH PREVAILED BEFORE THE CONQUEST.

BY

FRANCIS PALGRAVE, F.R.S. & F.S.A.

PART I.

"By *Commonwealth* I must be understood all along to mean, not a Democracy, or any form of "Government, but *any independent community*, which the Latins signified by the word *Civitas*, to "which the word which best answers in our language is *Commonwealth*, and most properly expresses "such a Society of Men, which Community or City in English does not, for there may be subordinate "Communities in a Government; and City amongst us has quite a different notion from Common-"wealth: and, therefore, to avoid ambiguity, I crave leave to use the word *Commonwealth* in that "sense in which I find it used by King James the First, and I take it to be its genuine signification; "which, if any body dislike, I consent with him to change it for a better."—LOCKE, *on Government*.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.

MDCCCXXXII.

TO

HENRY, MARQUESS OF LANSDOWNE,
EARL OF KERRY,

LORD PRESIDENT OF THE COUNCIL,

&c. &c. &c.

THIS WORK

IS INSCRIBED,

AS A TESTIMONY OF THE SINCERE RESPECT AND ESTEEM

OF

THE AUTHOR.

PREFACE.

So many works of deserved and established reputation, treating upon the antiquities of the Constitution, are already before the public, that some apology seems needed for adding another to their number. I must therefore excuse myself by the observation, that an attempt is here made, however imperfectly, to supply a chasm in our historical literature.

Political events generally occupy the first station in the pages of the Historian; political institutions, the second; judicial policy and jurisprudence, the third and last. But the character of the People mainly depends upon their Laws. And it is utterly impossible to obtain a correct view of the general administration of the State, unless we fully understand the spirit of the institutions which pervade the community, and regulate the daily actings and doings of mankind.

For this purpose, I have traced the Constitution upwards, and analysed the component elements of the Commonwealth. The ranks and conditions of society amongst the Anglo-Saxons, and their legal Institutions, are examined before discussing the political government of the Realm. When the Anglo-Saxon Institutions, subsisting through subsequent eras, have received that development which connects them with our existing English Common Law, I have pursued their history. But I have in no case adhered to a strict chronological arrangement of the matter. Whatever advantages chronological order may possess, it frequently tends to produce, either the most wearisome repetitions, or the most repulsive obscurity. I have endeavoured, therefore, to group the different subjects in such a manner as may best tell the story of the Constitution. In some cases, the reasons for the classification thus adopted may not at first be apparent: but considerable attention has been given to the *ground-plot* of the work; and, at the conclusion, the Reader will find that he has been conducted by the shortest as well as by the easiest path.

The researches of two of the most learned men of the present day have thrown a new light upon the origin of the laws and government prevailing in modern Europe. Savigny[1] clearly demonstrates the existence of Roman communities far in the middle ages: and Allen[2], with profound erudition, has shown how much of our monarchical theory is derived, not from the ancient Germans, but from the government of the Empire. When, however, I convinced myself that the States composing Western Christendom were to be considered as carrying on the succession of the Imperial authority of Rome, I had not the advantage of being guided by either of these Writers. I was not acquainted with the existence of the "*Geschichte des römischen Rechts im Mittelalter*," and the "*Inquiry into the Rise and Progress of the Royal Prerogative*" had not appeared: nor, till its appearance, was I aware of the views which its Author entertained; whilst he, on his part, was equally ignorant of mine. Our investigations were pursued independently of each other: and I had also made great progress in the composition of the work before I had read Dubos[3], who, in his "*Histoire Critique de l'établissement de la Monarchie Française dans les Gaules*," has supported similar positions with considerable acuteness and talent. The sarcastic remarks of Montesquieu[4] led me to suppose, in common, I believe, with most of Montesquieu's readers, that the Abbé Dubos was entirely undeserving of confidence: and I did not take the trouble to consult him, until, being compelled to do so in order to verify a particular passage, I discovered how unjustly he had been depreciated by his brilliant, but superficial antagonist.

On many important points, I differ entirely from the other writers who have adopted the same main ideas. Where I could, I have availed myself of their information: but when we disagree, I have seldom thought it necessary to enter into any controversy, either for the purpose of impugning those opinions which I do not hold, or of advocating my own theories.

The second part, or Appendix of Proofs and Illustrations, includes a selection of original documents and authorities, by which the accuracy of the positions in the body of the work may be tried. Furnished with the evidence, the Reader may judge for himself, and admit or refuse the inferences drawn by the Author.

Should I be enabled to complete my task, should life and opportunity be afforded to me, another Volume will continue

the further Progress of the Commonwealth to the accession of the House of Stuart, when, with the exception of the jurisdiction of the Council, the Constitution may be said to have settled in its present form.

Five years have elapsed since the work has been in the press. Upon the causes which retarded me it is unnecessary to enlarge: but the circumstance is mentioned, in order to explain the sentiments appearing in the first chapters, printed in 1827. If calculated according to the computation of the Calendar, the interval is short which separates us from that year: but the rapid march of events has rendered it a distant age; and the hopes, the opinions and the fears, entertained before the commencement of the new era in which we now live, have almost become a matter of history.

In various parts of the work I have noticed my obligations to those friends whose kindness has assisted me: but I must here particularly acknowledge the help received from Mr. Allen, whose zeal in the cause of historical investigation induced him to undertake the very tedious labour of examining and verifying the "Summaries of Anglo-Saxon History"; and from whose observations and criticisms I have derived the most material aid.

1*st February*, 1832.

CONTENTS.

CHAPTER THE FIRST.

	PAGE	Part I.
THE political history of England, illustrated by its legal history .	1	
Peculiarities of the legal Constitution of England . . .	1	
Political Constitution of England, derived from the legal Constitution.	2	
Course of events which produced the *English Commonwealth*, how distinguished from the history of other European nations .	3	
Laws of England, how considered by different parties and partizans	3	
Merits of our political Constitution	5	
Defects of our legal Constitution	6	
Principles of reform, neglected by the English Government . .	6	
Hereditary ranks of society amongst the Anglo-Saxons . .	7	
Royal Families, Ealdormen or Kings	7	
Anglo-Saxon rulers descended from Odin or Woden . . .	8	
The Royal *Caste*	8	
Eorls, Twelfhynde men, or Nobles	9	
Ceorls, Twihynde men, or Villeins	9	
Unequal rights of the Eorl and the Ceorl	10	
Compurgatory oath of one Eorl, equal to the oaths of six Ceorls .	10	
The value of the life of one Eorl, equal to the value of the lives of six Ceorls	10	
Privileges of the Nobility, how dependent upon property . .	11	
Inferior Nobility or Gentry, Sithcund men or Sixhynde men .	11	
Commendation, or the right of selecting a Military leader . .	12	
Ceorls, or Twihynde men, various names by which they were known. Bondes, Gebures, &c.	13	
Services of a Ceorl could be transferred by bequest, gift or sale .	14	
..but the Ceorls (or Villeins) not to be considered as slaves, or in a state approaching to slavery	14	
Ceorls, destitute of political power	15	
Explanation of the last position	15	
Ceorls, or Villeins, divided into two classes, Heorthfæst men and Folgers, or Householders and Inmates	15	
Theowas or Serfs, their condition	16	
Origin of the above-mentioned ranks and orders	16	
State of society in Gaul before the Roman conquest . . .	17	
"Druides" or Clergy	17	
"Equites" or Nobility	17	
"Plebs" or Third Estate	17	

Part I. PAGE

Voluntary surrenders of nobility and freedom, exemplified by the customs of Germany, Anglo-Saxon England, and Spain . . 18
Vassalage resulting from conquest 19
Opinions of the antiquaries of the seventeenth century . . . 19
Traditions of the Continental Saxons 19
Origin of the Anglo-Saxon Ceorls 20
Presumptions in favour of the British origin of the Ceorls . . 21
Britons not extirpated by the Anglo-Saxons 21
Large proportion of Belgic roots found in the Cymric or Welsh language 22
British vassalage, nearly identical with Anglo-Saxon vassalage . 23
Theowas or Serfs, to be chiefly considered as convicts, or individuals who had forfeited their liberty as a punishment for crime . 23
English or Anglo-Saxon "law of promotion" 24
..perhaps of British origin 24
Portions of Anglo-Saxon policy, to be paralleled in modern times 25
Disabilities of coloured population in the colonies, &c. . . . 25
The Anglo-Saxon "*were*" equivalent to the modern damages . 25
Beneficial results of the laws, which, acknowledging an aristocracy, allow of the acquisition of aristocratical rights by the body of the people 26

CHAPTER THE SECOND.

The political revolutions of Ancient Nations, not always accompanied by corresponding changes in policy 27
Effects of conquest counteracted by affinity 28
Affinities of the races by whom Britain has been successively conquered 28
British Laws 28
Triads of Dyvnwal Moelmud, or Molmutian laws 28
940, 948. Laws of Hoel Dda, or Howel the Good 29
1062, 1072. Hoel's laws amended by Blethyn 29
British laws and legal Triads, their merit 30
Similarity of the main characteristics of the British and Anglo-Saxon laws 30
Bede's account of the tribes who invaded Britain 30
Anglo-Saxons, a Belgic population 31
Belgians divided into many nations or tribes—Belgian Gauls, Old Saxons, Frisians, Jutes, Angles, &c. 31
Belgic Gauls 31
Old Saxons 32
Frisians 32
Frisians in Britain 33
Jutes and Angles 33
Wulemar, the common legislator of the Continental Angles and of the Frisians 33
Remains of the ancient poetry of the law 34
Anglo-Saxon laws, their supposed classes 34

PAGE Part I.

561, 616. Laws of Ethelbert, King of Kent 34
Probable causes of the enactment of Ethelbert's laws . . 35
Laws of Ethelbert exist only in the "Textus Roffensis," compiled by Ernulphus—1115, 1125 35
675, 685, 699. Laws of Hlothhære and Eadric; and of Wihtræd, Kings of Kent 36
Circa 700. Laws of Ina 36
872, 901. Laws of Alfred 37
Laws of Offa lost, except so far as they are included in Alfred's laws . 37
901, &c. Laws of Edward the Elder, and his successors . . 38
1017, 1033. Laws of Canute 38
Edward the Confessor confirms the laws of Canute . . . 38
England divided into "West Seaxnalage," "Myrcenlage," and "Danelage" 39
Formation or establishment of the Danelage 39
876. Halfdane divides Northumbria amongst his followers . . 39
877. Settlement of the five Danish Burghs; 879, 880, and of East Anglia 40
Names of places changed by the Danes 40
Anglo-Saxon Statute Laws, slowly adopted by the Danes . . 40
Norman Conquest, its results exaggerated 41
Controversies between the Whig and Tory antiquaries and historians 42
William the Conqueror introduces few positive alterations in the laws 43
The English said to have demanded the restoration of the laws of the Confessor 44
Existing texts of the laws ascribed to the Conqueror . . . 44
The Conqueror's Laws, principally re-enactments of the Anglo-Saxon laws 44
French, or Romance text, of the laws of the Conqueror, of doubtful antiquity 45
Laws of Henry I. 45
Ancient Latin version of the Anglo-Saxon laws; which version is one of the principal sources of the laws of Henry I. . . 46
Difficulties of understanding the Anglo-Saxon laws . . . 46
Defects of the versions of Wilkins and Lambarde 46
Anglo-Saxon Statutes, principally declarations or confirmations of the existing law; and, consequently, the law itself may be much more ancient than the Statute in which it first appears . . 46
Fragments of customary law 47
Inaccurate opinions prevailing in early times, respecting the origin of legal customs 47
Constitutional history of the Anglo-Saxons much perplexed . . 47
Practical applications of the Anglo-Saxon Law: Elective Franchise in Boroughs. Rights of Corporations to fines and penalties, &c. 48
No historical theory entitled to credit, if contradictory to the general structure of the Constitution 48

CHAPTER THE THIRD.

Part I.

PAGE

Ancient and modern Governments constituted upon opposite principles 49
Ancient jurisdictions, personal and not territorial . . . 49
Nomadic Tribes, their municipal government resulting from the internal relations of the people, unaffected by the rights of the Ruler claiming the sovereignty of the soil 49
Teutonic States, Assemblages of Septs, Clans, Tribes, and to be considered as Federations 50
English Constitution should be examined synthetically . . . 51
Anglo-Saxon State, composed of Townships, Hundreds and Wapentakes, Burghs, Lathes, Rapes and Trithings, Shires . . 51
Towns or Townships, their original nature 51
Lords of Townships 52
Townships, sometimes held by a small community, having the rights of Seignory 52
Direct dominion of the Lord over his inland, or demesne . . 52
Superiority of the Lord over the Præstaria, or Benefices, granted by Landboc, or Charter 52
Other portions of the township held by folk-right, or custom . 52
Common Land, a constituent portion of every Anglo-Saxon township 53
The "Tref" or Hamlet, the primary settlement amongst the Britons 53
The "Commot," containing fifty "Trefs," and the "Cantred," containing one hundred "Trefs" 53
Twelve "Maenawls" or Townships in each "Commot," of which six belonged to the King or his Officers 53
The British "Maer," a Magistrate exercising municipal authority over the Villeins 54
"Maer," an ancient Celtic title, "Maor," a Baron; "Maormor" . 54
Six "Maenawls" in each "Commot," held by free tenants . . 54
Proportions of Common Land in each Tref 54
The Tribes or "Cenedyllion" of the Britons 55
The "Pencenedyl," the "Head of the lineage" or Chief of the tribe 55
The "Teisbantyle," or elected Representative of the tribe . . 55
Patriarchal Government of the Britons 56
Appropriation of land, originally vested in nations, and not in individuals 56
Usufructuary occupation of land amongst the Germans . . 56
Annual repartition of lands made by the Magistracy or Princes of the German tribes 56
Celtic Clans, governed by the "Ceanfenne" or "Ceancinnith," i.e. the Head of the lineage 57
Irish custom of community of land, miscalled Gavelkind . . 57
Precarious and uncertain possession of land in ancient Ireland . 57
Partitions of land, how made by the Head of the lineage . . 58
New division of all the lands of the Sept on the death of any individual belonging to it 58

PAGE **Part I.**

"Tir Cyfrith," or numbered land, divided amongst the British Villeins by the Maer and the Chancellor 58
"Tir Gweltyawg," or hereditary land 58
Hereditary lands, how divided 59
Right of inheritance preserved to the ninth generation . . 59
No mention of deeds or charters in the ancient Welsh laws . . 59
British pedigrees, evidences of title to lands 59
Dwellings of the Celts and Teutons, mere encampments upon the land 59
Mischievous results of the system of community of lands amongst the Gael 60
Wildness and disunion of the Welsh when conquered by Edward I. 60
The Teutons modify the custom of the community of land, so as to render it less injurious 60
Feudal and other tenures of the Middle Ages, the result of the admixture of Roman jurisprudence and Teutonic customs . . . 61
Partial subsistence of the Teutonic customs, e.g. in the common lands of modern English Manors and Boroughs: another modification exhibited in the Theel Lands of East Friesland . . . 61
The Demath or Daymath, a measure of land common to England and Friesland (Note) 61
Laws of the Theel lands 62
Anglo-Saxon Townships split and divided by the Conqueror . . 62
Courts of the Township, analogous to the more recent Court Baron and Court Leet 63
Earliest laws of the Goths, termed "Bellagines" or By-laws . . 63
By-laws made by Courts Leet and Courts Baron 63
Laws of "Burlaw" in Scotland 63
"Bauern-Gericht" in Germany 64
Jurisdiction of the Anglo-Saxon Townships 64
Sac and Soc 64
Infangthief and Outfangthief 64
Toll and Team 64
Grith-Bryce, Bloodwite, Leirwite, &c. 64
The Anglo-Saxon Gerefa, Tun-gerefa, or Reeve, corresponding to the Celtic Maer 64
Etymology of the word Gerefa (Note) 65
Gerefa usually chosen by the Villeinage 65
Township represented in the Hundred and Shire Courts by Four Men and the Reeve 66
Rights of the Townsmen or Inhabitants of a Villa amongst the Salic Franks 66
..any one Inhabitant might prohibit the entry of a stranger . 66
..but the liberty of the Township might be gained by twelve months' residence 66
The Salic or Frankish Gravio or Tunginus, the chief municipal officer of the Villa, nearly like the Mayor of a Borough Town . . 66
Anglo-Saxon Townships probably formed from the union of Teutonic and British Communities 67

Part I. PAGE

Læna, or Benefices, carved out of the common land, by the Grants of the Anglo-Saxon King or Lord 67
Tenure by folkright, created by the occupation of common land without Grant 67
Modern examples of subject or subordinate communities retaining a share of municipal authority 68
Complexities of Jurisdiction, originally arising from the intermixture of personal and local authority 68
..instanced in the case of a modern soldier, subjected to municipal and also to martial law 68
Judicial and Legislative Assemblies of the German tribes . . 69
Authority of the Teutonic Priesthood and Nobility . . . 69
All questions discussed and adopted by the Select Council of Nobility, before they were propounded to the People 69
The Gau or Centena, the settlement of a German tribe or population 70
The Gauding, or Court of the Gau, represents the ancient Concilium 70
Twelve Scabini, or Echevins, the Judges of the Gau or Centena, and also the Representatives of the People in the Placita, elected by the people; but their election confirmed by the Sovereign . . 71
Scabini or Echevins, etymology of the name (Note) . . . 71
Magistrates of the Gau or Centena, the hereditary Graf, Graphio, or Comes, nominated from the ruling families; the Centgrave elected by the people 72
Authority of the Centgrave as Conservator of the Peace, &c. . 72
Power of the Centenarius restricted by Charlemagne . . . 73
Echevins lose their authority in the rural districts; but preserve their power in the walled towns, of which they become the Magistracy 73
Antiquity of the Constitution of the Germanic Centena, as above described, proved by its conformity to the Scandinavian Hard or Hærred 73
Etymology of the name (Note) 73
"Almenning," or common land of the Hærred 74
Appropriation of common land 74
Admeasurement of land amongst the Romans. The Fundus considered as an integer, divided into Ounces, like the measure of value; but considered, for public purposes, as an undivided unit 75
The Mark or Ora of land amongst the Scandinavians, &c. considered as the unit of measure 75
Goths in Italy follow the Roman custom of dividing the Fundus into ounces, from whence the custom was probably transmitted to the Goths of the North 75
..adopted also by the Cymri 75
Gothic grants quoted (Note) 75
Land reclaimed from the "Almenning" becomes a "By," i.e. Township 76
Appropriated land, subject to the jurisdiction of the Hærred . 76
Fee simple or dominion of land thus appropriated, vested in the community, the Bonde having only the usufruct, until it became "Odal-land"; i.e. allodial or inheritable 76

PAGE Part I

..forfeited by the tenant if allowed to lie waste 76
Kenton (Devonshire), custom of (Note) 76
"Hærredzthing," or Court of the Hærred 77
"Næmda" or Twelve men, corresponding to the Teutonic Echevins, and in whom the powers of judicature were vested . . 77
Anglo-Saxon Hundred 77
Opinions as to its component parts 77
Division of the East Anglian Hundreds into Twelve Leets; viz. Four head Leets or Tribes, each containing three subordinate Leets 78
Gothic or long hundred consists of six score 78
The Wapentake, equivalent to the Hundred, said to be so called from the ceremony observed at the installation of the Ealdorman, when the suitors touched his spear or weapon 78
Duodenary calculation (Note) 78
Analogous custom observed in the Landthing of the Norwegians . 79
Hundred Court, how held 79
Thanes and Landlords, the Four Men, the Reeve, and the Priest of every Township 79
The Bishop 79
The Ealdorman 79
980. Aylwin, Ealdorman of East Anglia, presides in the Hundreds of Cambridge 79
The Gerefa or Præpositus (afterwards the Bailiff) of the Hundred 80
Fines and Forfeitures partly belonging to the Hundred . . 80
Rights of modern Corporations to Fines, derived from the ancient right of Hundreds 80
Jurisdiction vested in select bodies 80
Twelve chief Thanes named in every Wapentake, to present crimes and misdemeanors 80
Twelve "Lahmen," six English and six Britons, named to administer justice in Damnonia or West Wales 80
Judges of the Hundred in East Anglia, Twelve, Twenty-four, or Thirty-six 80
Mode of administering justice not uniform in different parts of England 81
Twofold jurisdiction of the Hundred, voluntary and contentious . 81
Grants of land made or promulgated in the Hundred Court . 81
Hundreds of Sussex and Kent much smaller than in other parts of England, and destitute of jurisdiction, which, in those Kingdoms, was exercised in the Rape, or in the Lest or Lathe . . 81
Lathe of Romney governed by a Jury of Twenty-four, who, by their presentments, make the laws or ordinances of the Lathe . 82
Anglo-Saxon Burghs to be considered as Hundreds 82
Lathe, etymology of (Note) 82
Burghmoot or Portmoot, equivalent to the Hundred Court . . 83
The "By" or Manor of Scandinavia, originally the agricultural location of the husbandman, without any political existence . . 83

Part I. PAGE

The Anglo-Saxon Township a species of colony established by a Chieftain, with a jurisdiction derived or deduced from a larger state 84
Federative Governments amongst the Greeks and Etruscans . . 84
Amphictyonic League; its foundation by Acrisius or Amphictyon, composed originally of Twelve States. 84
Amphictyonic Council, in which each State appeared by its elected Judges and Representatives 85
..continues to be composed of Twelve Tribes, notwithstanding the increase of members, the Cities included in a Tribe possessing a collective vote 85
The Pan-Ionian Synod composed of the Twelve Cities or States founded in Asia Minor, by the sons of Codrus 85
The Twelve associated Cities of Etruria 85
One of the Twelve Kings of the Etrurian Cities elected as the Imperator or military leader of the Confederacy 85
Attica first settled by Twelve States or municipal jurisdictions . 86
Twelve Principalities of the Phæacians 86
The Tectosages, Trocmi, and Tolistobogii, part of the army of Brennus originally seated in Gallia Narbonnensis, found the kingdom of Thule in Thrace, and afterwards settle in Bithynia, Phrygia and Cappadocia, where they establish the Twelve Tetrarchies of Gallo-Græcia, before Christ, 241. Each of the Three Tribes divided into Four Tetrarchies 87
The Galatian State governed by Twelve Tetrarchs, Twelve Judges and Thirty-six Military Commanders 87
Teutonic Nations destitute of any common jurisdiction in the time of Cæsar: but accustomed to form Confederations for political purposes 88
War-Kings elective, whose authority was temporary, chosen from amongst the Twelve Ealdormen of the Old, or Continental, Saxons 89
The Parliaments, &c. of the Middle Ages to be considered as the simultaneous meeting of different Courts and Councils, the armed Council, the Supreme Judicial Assembly, &c. . . . 90
Mallum of the ancient Franks, composed of the Bishops, &c., and of the Twelve Echevins of every Centena 90
The Twelve Echevins, Judges and Representatives of the Centena . 91
Capitularies direct that the "people" shall be asked to assent to new laws; but which assent was given by the Echevins . . 91
Court of the "Lagsaga" of Sweden composed of the elected Lagman, or Lawman, the Bishop, two Priests from the Episcopal Chapter, two of the King's Council, and the Næmda of Twelve Men, elected and named by the King and the Landsmen . . 91
Customary laws of Upland revised and re-enacted under King Bergher, 1296 92
Næmda of Twelve men elected for the purpose of reforming the laws 92
Laws declared by the Næmda, confirmed by the royal Charter . 92
Taxes imposed by the Næmda 92

PAGE **Part I.**

The Estate of the Peasantry in the modern Diets of Denmark, Sweden, and Norway, created out of the Næmda 92
Iceland, how governed 93
The Godordsman, Priest and Judge of his District or Godord . 93
Acts conjointly with a Court of Twelve men 93
Iceland divided into Fierdings, or Quarters 93
"Lögretta," or supreme legislative assembly, composed of Twelve "Godordsmen" or Judges from each Quarter; and each of whom was accompanied by two others, making altogether Thirty-six from each Quarter 93
Full Lögretta composed of One hundred and forty-four Godordsmen and Suitors, together with the Lawmen and Bishops . . . 93
The Anglo-Saxon Shires divided into two classes—such as, in their origin, were Kingdoms or independent States—Kent, Sussex, Essex, Norfolk, Suffolk, Middlesex, Surrey, Lindsey (or Lincoln), &c., or formed out of British States or Principalities . . 94
Shires of the second class, dismemberments of larger States or Kingdoms, such as Yorkshire, Derbyshire, &c. 94
Country between the Ribble and the Mersey, not made Shire ground before the Conquest 94
Shire of Winchelcombe added to Gloucester, by Eadric Streona, about 1017 94
Shiremoot, composed of the Bishop, the Ealdorman, the Gerefa . 95
The more recent Court before the Justices in Eyre, probably equivalent to the ancient Shiremoot 95
..each Hundred, Burgh, and Manor in ancient demesne, represented by Twelve Jurors 95
The Four Men and the Reeve of the Township 96
Echevins, or Jurors, amongst the first Representatives of the People 96
Laws of Howel enacted by an Assembly composed of Six men, summoned from every Commot, or Twelve from every Cantred, confirmed by a second delegation, composed of Twelve Laymen, and one Clerk, Blegored the Wise 96
Laws of the Confessor, demanded by the English, and declared by Twelve sworn men summoned from every Shire; whose presentments were confirmed by the Conqueror, in the same manner as the presentment of the laws of Upland 97
Custom of "giving the law," by the presentments of Juries; which presentments afterwards became ordinances, by-laws, &c. . 97
1249. Ordinances of Romney Marsh. Border laws declared by the oaths of Twelve English and Twelve Scottish Knights . 97
Articles of the Barmoot Court, ordained by the grand Inquest of Warkesworth Wapentake 98
Berghmoot, etymology of the name (Note) 98
Stannary Courts, or Parliaments, of Devon and Cornwall, composed of Four Leet Juries, empannelled from the Four quarters of the Shire 98
Isle of Man, composed of Six Sheddings or Hundreds . . 98

Part I. PAGE

The Celtic Moar, or Maer, the chief municipal officer of the Shedding . 98
The Deemsters 98
"Fencing" of the Shedding Court; Four men from every Parish . 98
The Shedding Jury 98
The Tynwald Court, anciently composed of Six men of every Shedding 99
1430. Laws made upon their petition, addressed to the Lord of Man and his Council 99
1442—1594. Criminal jurisdiction exercised by a Jury or Inquest of Twenty-four (now called the Keys), called and sworn from amongst the Thirty-six men of the Sheddings; which Jury, elected for the purpose of declaring the doubtful points, had the power of making or creating laws, by their verdicts or presentments . . 99
1643. Remedial Court of Tynwald, composed of the Lord, his Council, the Twenty-four Keys, and the Four Men of every Parish, assembled for the redress of grievances 99
Jury of Twenty-four; Twelve taken from the Keys, and Twelve from the Four Men of the Parishes 100
States of the Norman Islands; how similar, in general constitution, to the English Parliament 100
Guernsey and Jersey each composed of Twelve parishes . . 100
Vintains, said to have been formerly composed of twenty families 100
Originally Twelve Vintaineers in each Parish 100
Military authority of the Vintaineers 100
Taxes assessed by the Dozeineers, or Twelve sworn men of each parish; also possessing a judicial authority 100
Constable, chosen by the inhabitants of each Parish . . . 100
Assisted by Two Centeneers 100
Twelve Constables form the Grand Inquest of the Island, and also represent the Commons of the Island, and constitute the third branch of the States 101
Legislative Inquests; Laws and Customs declared by the verdicts of the Twelve "Prodehomes" of each of the Twelve Parishes. 5 Ed. III. 101
Twelve sworn Coroners, Jurats, or Justiciars, who hold their offices for life, and form the second branch of the States . . . 101
Twelve parish Priests represent the Church, and form the first branch of the States 101
Tenants in capite, or feudal Nobility of the Anglo-Norman Isles, have no entrance in the States, but bound to render suit and service to the Cour de Heritage 101
996. Great Rebellion of the Norman Peasantry, who establish a general Convention, consisting of the Representatives elected from every Clan or Sept 102
..rebellion suppressed by Raoul, Count of Ivry 102
Ancient laws, unwritten and recorded by the testimony of the Judges, &c. 103
Elective Officers or Dignitaries 103
Analogies between the customs of Gothic Spain and Scandinavia . 104

PAGE Part I.

Adalid, or leader of the Host, elected by a Jury of Twelve Adalides 104
If Twelve Adalides could not be found, Jury completed by a *tales* 104
Inauguration of the newly-elected Adalid: he was girt with the sword and hoisted, or lifted up, on a shield, by the Jury of election . 104
Almocaden, or leader of the infantry, elected by a Jury of Twelve Almocadenes 105
Newly-elected Almocaden hoisted by the Jury of election . . 105
King of Navarre inaugurated by a similar ceremony . . . 105
Hærredz-Hoffding, or executive Magistrate of the Suio-Gothic Hærred, elected by the Næmda 105
Lagman, or Judge of the Suio-Gothic Lagsaga or Shire, elected by the Næmda, half of Bondes, and half of the King's feudal Tenants 106
King of Sweden, elected by the Næmdas of Twelve Men, and afterwards inaugurated in each Province, for which purpose he makes a circuit, or "rides the road of Eric," through his Kingdom . 106
940. Succession to the Crown of Norway decreed according to the law of Haco, the foster son of Athelstane, by Twelve men chosen from each Diocese, together with the Prelacy . . . 106
1177. Suerre the Priest, or Preste-Suerre, recognized as King, by Twelve Men summoned from each Hærred 107
Duodenary Courts, their origin ascribed to Odin . . . 108
Asgard, the chief City of the Land of the Ases, beyond the Tanais, governed by the Twelve "Diar" or "Drottnar" . . . 108
Twelve Head men appointed by Odin, to "doom the land's law," at Sigtuna in Sweden 108
College or Gild of Twelve ruling Priests 108
The Earthly Asgard, the type of the habitation of the Twelve Dii Majores of the Scandinavians 109
Mythological traditions, how to be appreciated 109
Influence of the Federative policy of the Teutons . . . 110

CHAPTER THE FOURTH.

Ancient popular Courts held in the open air 111
Custom altered by Charlemagne, who directed that the Courts should be holden in covered buildings 111
Places of meeting, under ancient trees, on hills or tumuli . . 112
Moot-hill of Scone; Thing-wold or Tynwald of Man . . . 112
..or within circles of stones, or near rivers, all of which were places of heathen worship 113
Visible signs and tokens, their use in the Roman law . . 113
Land conveyed by the delivery of earth and stone, of a rod or branch, &c. 113
..symbols respectively indicating the transfer of absolute or qualified rights of possession 114
Mancipation and Tradition of the Romans 114
Courts summoned in Scandinavia, by the delivery of a token, which was passed from hand to hand; of which the form was varied according to the peculiar objects of the Court . . . 114

Part I. PAGE

Parties summoned to appear before the Court, by the delivery of similar tokens 115
"Stefnovitni," corresponding to the "good Summoners" of the English and Anglo-Norman laws 115
Legal proceedings, wholly oral 115
No legal records amongst the Anglo-Saxons 116
Proof of legal proceedings given, by appealing to the testimony of living witnesses 116
Landbocs or Charters admitted as proofs of title to land . . 116
..purchased by the possessor of the land, when outstanding in the hands of other parties 116
Compromises of suits recited in the Landbocs or Charters . . 116
Landbocs deposited with the "Bur Thegn," the Cubicularius, or Chamberlain, in the "Hord" or Treasury (afterwards the Exchequer); or in the King's Chapel (afterwards the Chancery) . 117
"Record," the testimony of witnesses, whose declaration was final and conclusive 117
"Records" of the King's Court in Normandy, of the Exchequer, &c. 117
"Record of Court," according to the English law 118
"Record" of a Fine, made by the Judges and Four Knights, who were present when the parties entered into the agreement . 118
Record of a suit in the County Court, by Four Knights, who were present at the plea, &c. 118
Record, original application of the term (Note) 118
"Record," originally made *ore tenus* by the Recorders; but a written statement of their evidence, authenticated by their seals, afterwards substituted for their oral testimony 119
Original signification of the term "Record" nearly forgotten; how retained in Scotland in the 14th century, and also in the English statutes, authorizing Justices of the Peace to make the "Record" of forcible entries and riots 119
Customs of London always testified; i.e. "recorded" by the mouth of the Recorder 119
Technical forms strictly observed by the Scandinavians . . 120
..any slip or error in the forms annulled the proceedings . 120
Many of these formulæ, originally in verse, and connected with religious worship 120
Consequences of the prevalence of oral testimony 121
Consequences resulting from the custom of holding the County Courts in the open air 121
Popular rights of election favoured by this custom . . . 122

CHAPTER THE FIFTH.

PAGE **Part I.**

None of the Anglo-Saxon ecclesiastical foundations derived from the British Hierarchy—Glastonbury excepted 123
British Charters of Glastonbury, confirmed by Henry II. . . . 123
Extinction of the British Hierarchy in the Anglo-Saxon Kingdoms . 124
Ancient organization of the Church: the Diocese, the Parish of the Bishop; Presbyters of the rural Congregations, destitute of any specific endowment 124
The property of the Diocese formed a common fund, out of which the Clergy were maintained 124
Christianity, not generally received by the British Tribes; but probably confined to the Romans and Romanized Britons . . . 125
Druidical faith subsisting in Strath Clyde and Cumbria, and amongst the mixed population of Britons and Anglo-Saxons in Northumbria 125
627. Coifi, Chief of the Druids of Deira 125
Flexibility of Northern polytheism 125
Foundation of the national Dioceses of the Anglo-Saxons; their munificent endowments 126
Wihtræd, King of Kent (700), and Ethelbald, King of Mercia (742 and 749), discharge the Church from secular exactions, i.e. the payment of rents in kind, &c., but reserve and enforce the performance of the Trinoda Necessitas; viz. Brycg-bot (the tax for the reparation of bridges and highways); Burh-bot (tax for repairs of walls and fortresses); and the Fyrd, or military service 126
Military services sometimes defined, by a statement of the number of "Vassals (or Thanes) and shields," which the Prelate was to furnish in respect of his land 127
Ethelred, the Ealdorman of Mercia, declares that the Monks of Berkeley shall be taxable with the other inhabitants of the district . 127
King entitled to quarter his Hunters, Falconers and followers, upon the Monasteries 127
Continental Clergy, under the lower Empire, exempted from similar burdens; which exemptions were confirmed by Charlemagne . 128
745. St. Boniface, Bishop of Mainz, complains of the "servitude" of the English Monasteries 128
855. Ethelwulf grants one-tenth part of the land in his Kingdom of Wessex, for pious uses; this donation not a grant of tithes, as erroneously supposed, but a grant of the tenth part of the land by metes and bounds, free from the Trinoda Necessitas . . 128
Donations of the Anglo-Saxon Kings derived from two sources: I. demesne lands, II. common lands of the Townships, &c.; which, being granted with the Tenants settled on the appropriated tenements, became new Townships 130
Mode of making donations, by grant to a Thane, who then transferred the land to the Church 130
Conjecture that in some cases the land held by "folkright," may have been surrendered to the King, in order that the owner might receive the land under a new tenure, with power of alienation . 130

Part I. PAGE

Roman churches, still standing, when Augustine first reached England 131
Anglo-Saxon churches, how built and founded 131
Parochial Clergy not established throughout England in the eighth century 131
Canons of Archbishop Theodore indicating a partial establishment in the south of England 131
750. Egbert, Archbishop of York, regulates the foundation of parish churches 131
Laws of Edgar and Canute, allowing the appropriation of tithes to new parish churches, but prohibiting such appropriation to domestic chapels 132
Continental Clergy, governed by the Roman law, the "Barbarian" losing his national law by ordination 132
Anglo-Saxon Clergy retain their national laws, and are subjected to the secular tribunals 133
Rank of the Clergy; value of their compurgatory oaths . . 133
Bishops ranked with Ealdormen; Mass-Thanes, i.e. Priests, with World-Thanes 133
Privileges of the ecclesiastical edifices 134
Civil immunities granted to the possessions of the clergy . . 134
Origin of the Palatine jurisdiction of Ely 134
Privileges granted to the Townships, &c. of the Clergy, which gave them a jurisdiction, in the nature of that enjoyed by the King's Burghs 134
Temporalities of Durham created by a dismemberment of Northumbria 134
Anxiety of the Clergy to obtain land by purchase 135
Insecurity of the possessions of the Church 135
..alienated by the Clergy, and seized by the Laity . . . 135
Destruction of the Churches north of the Thames, during the Danish invasions: after which their property escheated to the Crown, and was granted out to laymen 135
See of Rochester plundered by Godwin 136
Leofric invades the possessions of the See of Worcester . . 136
Leofric restores a portion of the land, and promises that the rest shall revert to the See after his decease; his widow, Godiva, bargains for the possession of the lands, which, after her death, were seized by Edwin and Morcar 136
Spoliations of Worcester recorded by Hemingus 136
William the Conqueror continues these spoliations 136
Primacy of Canterbury over the British Bishops granted by St. Gregory to St. Augustine, in consequence of the temporal Sovereignty of Ethelbert 137
Picts and Scots, not subjected to the authority of the Archbishop of York 138
Lothian included in the Bishopric of Lindisfarne, until the erection of the Bishopric of St. Andrew's 138
Bishop of Candida Casa, Whithern or Galloway, acknowledges the Primacy of York 138

PAGE Part I.

Councils of the Clergy 139
673, 680. Councils of Herutford (Hertford) and Haethfelth (Bishops-Hatfield), both held by Theodore of Tarsus, Archbishop of Canterbury 139
Ecclesiastical Councils held concurrently with the secular Councils, in which many laws relating to the Church were enacted . 139
785. Proceedings of the Council of Cealchythe 140
Bishops nominated by the King 141
Edward the Confessor grants the Bishoprics by "gewrit and insiegel"; i.e. writ, charter, or patent under seal 141
Simoniacal presentations 141
666. Wini buys the Bishopric of London from Wulfere, King of Mercia 141
Ecclesiastical patronage of the "Principes" of Edgar exerted for their own advantage 141
Edward the Confessor connives at abuses 142
1048—50. Adventures of Sparhafoc, Abbot of Abingdon, and afterwards Bishop of London 142
The King's Priests or Chaplains, corresponding to the Clerks of the Palace of the Frankish Monarchs, obtain the principal preferments 143
Eleven of the King's Capellani, together with the Twelfth, the Cancellarius, subscribing a royal Charter 144
Chancellors of the Gothic and Frankish Sovereigns 144
Edgar appropriates the Chancellorship to the Abbots of Ely, St. Augustine's, and Glastonbury; each taking his turn for four months of the year 144
The Five Secretaries or Chancellors of Canute 145
Leofric, Bishop of Exeter, Chancellor of Edward the Confessor . 145
The King's Clerks, acting as his Scribes, became a permanent branch of his Court, and keepers of the Records deposited in the Royal Chapel, being the establishment afterwards called the Chancery . 145

CHAPTER THE SIXTH.

Imperfection of the Judicial Establishments of the Anglo-Saxons, and other nations in a similar stage of civilization; injured parties allowed to take the law into their own hands . . . 147
"Namium," or distress, the first process by which a defendant was compelled to appear 147
Process of the Courts of Common Law, by summons and *distringas*, grounded upon the Anglo-Saxon law 148
The Landlord's power of distraining for rent, derived from the same source 148
Deadly feuds allowed by the Anglo-Saxons 148
Reprisals, the mode of obtaining justice when the law cannot reach the offending or guilty party 149

Part I. PAGE

Conservators of liberties empowered to compel King John to observe the provisions of Magna Charta, by distraining his possessions 149

Heads of the Irish Septs, liable for the crimes committed by their dependents 150

Responsibility of the "Maegth," or Kindred, amongst the Anglo-Saxons elucidated by the Salic law, which enabled any individual to dissolve his natural alliance with his "Parentela" . . 150

Territorial responsibility 151

"Murdrum," or the amerciament imposed upon a Township if any one—not being an Englishman—was slain within its precincts, supposed to have been enacted by Canute, and continued by William the Conqueror; but more probably resulting from the ancient Anglo-Saxon law, which placed *all* strangers under the "Mund," or protection of the King 151

Wealth of ancient Nations principally consisting of flocks and herds: and hence the Anglo-Saxon laws of theft are principally adapted to the protection of cattle 152

If the "Spor" or hoof marks of the stolen cattle could be tracked into an Anglo-Saxon district, the inhabitants were bound to track them out, or to pay the value 153

Similar law prevailing between the Britons and Anglo-Saxons of the West; and also in the Scottish Highlands 153

Warranty 154

"Team," or generation, i.e. proof that the cattle were born on the land of the party claiming them 154

"Fore-ath," or oath of the Pursuer, supported by one Compurgator 154

Rebutted by the oath of the Defender, supported by two Compurgators 154

Sales of cattle, not legal, unless made in the presence of witnesses; or of the Portreeve, the Priest, &c. 154

Jurats or sworn Witnesses appointed pursuant to a statute enacted by Edgar 155

Pains and penalties incurred by the owners of cattle, who omitted to make the declarations required by law 156

Alterations of the laws of Edgar and Canute by the Conqueror . 156

Partial subsistence of these Anglo-Saxon laws, at the present day 156

The "Frankpledge" 157

Mistaken opinions respecting the intent and character of the Frankpledge 157

Divided into two branches, the Seignorial Freeborh, where the Lord was the permanent "Borh," or Pledge for the appearance of his retainer or manupast; and the Collective Freeborh, consisting of certain associations of the Ceorls or Villeins, who were mutually "Borh," or pledges for each other; which associations were called Tithings, ten being the smallest number of which they were composed 157

Seignorial Freeborh or Frankpledge, being the responsibility of the Lord for his Vassal, &c., defined by the Anglo-Saxon law . 158

PAGE **Part I.**

Uncertain antiquity of the Collective Frankpledges or Tithings, which appear to have replaced the responsibility of the Sept or Clan 158

Ancient laws of responsibility renewed and enforced under Athelstane 159

Laws enacted by the Witenagemot of Kent; that every Lord should keep his Villeins in his own pledge, or appoint a Reeve to coerce them in his stead 159

Supposed origin of the Tithings, as deduced from certain associations created by the Anglo-Saxon by-laws of London . . 160

Laws of Canute, apparently noticing the Tithings . . . 160

Collective Frankpledge, description of this institution collected from the Legal Treatises and Records between the reigns of Henry II. and Edward I. 161

Collective Free-pledges, sometimes independent of any territorial divisions, being Bands or Companies, named after the Chief Pledge or Borsholder, by whom they were commanded; e.g. "Francum Plegium Hugonis de la Grave," "Decenna Thomæ de Weston," &c., sometimes including all the inhabitants of a Township, which was hence called a Tithing 161

Persons who were exempted from the Free-pledge, both seignorial and collective, if their property was of sufficient amount to be considered as a permanent security for their good behaviour . 162

Collective Free-pledge supposed, but erroneously, to exist amongst the Continental Nations 162

Decennarius, an inferior Magistrate 163

Military Decennaries of the Barbaric Nations 163

Collective Free-pledge, perhaps grounded upon a military organization 163

Military Police of the Anglo-Saxons 164

"Stret-warde," or the duty of guarding and patrolling the King's highway; performed under the command of the "Wardreeve" 164

13 Edward I. Military organization, founded upon the Anglo-Saxon law, and improved by the statute of Winton; converted, in process of time, into a Police Establishment; the Constable being originally a leader of the levies: and the Conservators of the Peace (whose powers afterwards merged in the commissions of Justice of the Peace) being, at first, military commanders . . 164

Oath of Allegiance, taken by all who were enrolled in the Frankpledge; being the same oath as was imposed by William the Conqueror upon all his subjects 165

No view of Frankpledge in the Northern Shires (Note) . . 165

"Land Sittende menn," or "Land Sassen" (Note) . . . 165

Collective Frankpledge, not universal throughout England . 166

No variation of policy occasioned by the absence of the collective Frankpledge, the Township incurring the liability which would have attached to the Decenna 166

Townships amerced, when they had harboured any resiant not enrolled in the Frankpledge 167

Liability of the Collective Frankpledge 167

Part I. PAGE

Crimes divided by the Anglo-Saxons into "Bot-leas," or inexpiable offences; and those for which compensation could be accepted 168
"Were," a compensation, now received in the shape of damages 168
Theft, severity with which it was punished 169
The Thief stigmatized in the Capitularies, as being "infidelis regno Francorum"; and in the Saxon laws, as "Folc-ungetreu" . 169
Increased severity of punishment under Canute 169
Barbarity of the modern criminal jurisprudence of England—*less* excusable than the severity of ancient laws . . . 171

CHAPTER THE SEVENTH.

Summary Punishment inflicted by the old English law upon criminals taken in open delict; in which case no further trial was required 172
Artificial presumptions raised by the Anglo-Saxon law, and considered as equivalent to positive evidence 172
Limitations imposed by the King's Court, after the Conquest, upon the exercise of the Franchise of "Infangthief," or the right possessed by the Lord of the Township of inflicting summary punishment 173
The Grith-Sergeant or Peace Officer, his presence necessary in some Shires, for the purpose of legalizing the summary execution of Offenders 173
Criminal Jurisdiction subsists in Scotland till the abolition of the heritable Jurisdictions in 1747; falls into desuetude in England about the reign of Edward III., except in the Borough of Halifax, where the old law of "Infangthief" was retained (but with some modification) as a local law 174
Three modes of Arraignment amongst the Anglo-Saxons, viz. I. By the presentment of the Twelve Chief Thanes or Echevins of the Hundred or Wapentake; II. By the presentment of the men of the Township; III. or by the appeal of the party, who was sworn to the truth of his accusation 174
Trial, the culprit allowed to claim the testimony of his Lord, whether he was "clear" or unsuspected of crime, which, if favourable, entitled him to defend himself by the "Lad," or simple compurgation, or by the simple ordeal 175
But if the testimony of the Lord was unfavourable, the culprit was bound to undergo the threefold ordeal, or to find a triple "Lad" or Compurgation 176
Compurgation as directed by the laws of the Conqueror. If the culprit obtained "good testimony," his own oath was sufficient. If otherwise, by Eleven Compurgators, taken from an array of Fourteen 176
If accused of breaking into a house, or violating the immunity of the church, the simple Compurgation was to consist of Eleven taken from an array of Fourteen; and the triple, of Thirty-six, taken from an array of Forty-eight 176
Compurgation in civil suits, regulated by the value of the property 177

PAGE **Part I.**

Compurgation of the King's Thane, by Twelve of his equals; of an inferior Thane, by Eleven of his Peers and One King's Thane 177

Wager of Law, allowed in cases of Felony in certain English Burghs, after it had been generally abolished by the "Assizes" of Clarendon and Northampton, enacted by Henry II. . . . 177

Compurgators to be selected from the Freeborh of the accused; the privilege, according to the laws of Canute, being denied to such as were not in the collective Frankpledge . . . 179

Trial by Battle 179

Frotho, King of Denmark: Traditions concerning his Battle Laws 179

Affronts, satisfaction to be given by the Duel according to the law of Upland 179

1013. Duel between Gunnlaug Ormstungu, i.e. "Gunnlaug with the serpent's tongue," and Rafn the Skald, which occasions the abolition of the Duel in Iceland 180

Scandinavian Duels, not to be considered as Judicial Battles . 180

Their regulations 180

Trial by Battle in civil actions or suits concerning territorial possessions, to be considered as the termination of a war between two Septs or Clans, who agree to terminate their hostilities by abiding the event of a single combat between their respective Champions 180

The foregoing proposition proved and exemplified by the Laws of the Alemanni, in which Trial by battle is described as the means of ending disputes between two Septs or "Genealogiæ," concerning the boundaries of their Townlands 181

Trial by Battle, allowed for Allodial Lands, in which an absolute property had been gained by appropriation, according to the Bavarian laws 181

The Claimant begins by ousting the person in possession; and then wages his law to prove that *he* had been the first lawful occupant 181

The late Occupant (who, having been turned out of possession, is now the Plaintiff) replies, that *he* has witnesses who can prove that *he*, or those under whom he claims, had priority of occupation 182

No witnesses received unless they were qualified by holding allodial lands, and possessed of pecuniary property to the amount of six solidi 182

Oath of the witness 182

The Tenant falsifies the declarations of the witness, and demands wager of battle 182

"Ornest," or Trial by Combat, not mentioned in the Anglo-Saxon laws, and first noticed in the Statutory Charter promulgated by William the Conqueror; which declares, that if an Englishman appeals a Frenchman of felony, &c., the Frenchman may defend himself by "Ornest" or Battle, or by an inquest of "witnesses" (or jury), the latter according to the Law of Normandy . 182

An Englishman appealed by a Frenchman, might take his trial by witnesses; by "Ornest"; or by the ordeal 183

Part I. PAGE

In appeals of outlawry, the Frenchman might wage Battle, and if the Englishman declined Battle, then he might clear himself by "Oath" 183

1096. Appeal of Treason between Geoffrey Baynard and William, Count of Eu, decided by Battle 183

Probability of the existence of "Ornest," or Trial by Battle, before the Conquest; the laws of the Conqueror seeming to refer to it as an established custom 183

1077. Wager of Battle offered by the "witnesses" of Wulstan, Bishop of Worcester, against Walter, Abbot of Evesham . . 184

Battle joined in the Anglo-Saxon County Courts 184

According to the English Common Law, a forcible entry was the first step taken by a claimant to recover his lands . . . 184

Forms of Process invented by Henry II.; such as the *Grand Assize*, *Assize of Novel Disseisin*, &c. 184

Intrusion, a Disseisin committed by a stranger entering upon the vacant possession immediately upon the death of the Ancestor, and when the Heir was an infant or absent . . . 185

A freehold acquired by the Heir of the Disseisor: if the Heir or Owner *de jure* attempted to regain possession by force, the Heir or Owner *de facto* might resist him by force 185

Writ of Right brought by the Heir or Owner *de jure* . . 185

Wager of Battle; Oath of the Witness who appeared in the character of Champion, and who swore that he had seen the Ancestor of the Demandant (i.e. the Owner *de jure*) in possession of the disputed lands, or that his Father, who had seen the Ancestor in possession, had enjoined him to prove the facts . . . 186

In questions of disputed title, though the law came in aid of the parties, yet they were nevertheless forced to do their best to gain or maintain possession by force 186

Entry to be made upon the land, or the right to be kept up by continual claim 187

Battle Trial, not entirely absurd in its origin, though afterwards becoming so, by the change of circumstances in society . 187

Modern Duels occasioned by the narrowness of the common law, which refuses to take any cognizance of affronts, &c. . . . 189

Compurgation and Ordeal; principles upon which they were introduced 189

An Appellant to be considered as a witness in his own cause . 190

Presentment of the Hundred or Township, a charge grounded upon general suspicion 190

Compurgation, equivalent to evidence of character, given in a case where the evidence of the fact is so far doubtful, as to admit of being rebutted by the inferences arising from good repute . 191

Ordeal; the Offender not driven to this mode of trial until he had failed to adduce any satisfactory evidence in his favour . . 191

The Ordeal trial compared with the application of Torture . 191

Torture, employed by the Civilians in cases where the evidence, according to the English law, would warrant a capital conviction 192

PAGE **Part I.**

Apparent tenderness, but real cruelty and inhumanity of the English Criminal Law, in cases where the Barbarian drove the Criminal to the Ordeal, or the Civilian applied the Torture . . . 193

CHAPTER THE EIGHTH.

Anglo-Saxon Laws, subsisting without material change from the Conquest to the reign of Henry II. 195

Anarchy and misery of the reign of Stephen 196

Henry II. founder of the system, which was afterwards matured into the "Common Law" 197

Contradictory portraits of Henry II. Represented by Glanville, the Justiciar, as a just and merciful King, and by Radulphus Niger as the worst of tyrants 197

Institutions established by the Laws of Henry II.: Trial by Jury, Judicial Circuits, &c. 198

Trial by Jury, according to the old English Law, essentially different from the modern Jury; the ancient Jurymen being the Witnesses of the fact, and not the judges or triers of the truth of the evidence given by other Witnesses before them . . . 199

Trial by Jury, not to be considered as the "*Judicium Parium*" promised or secured by Magna Charta 199

Norman Inquests, consisting of Twenty-four good and lawful men, summoned from the place where the crime had been committed, and examined privily and apart by the Judge, before they were confronted with the Prisoner 200

Norman "Recognitors" in civil cases 200

Norman Recognitions, by which public rights or privileges were testified 200

English Inquests, composed of Witnesses, sworn to speak the truth according to the best of their knowledge 201

Ancient legal rules respecting Jurors, consistent with their character as Witnesses 201

Rejection of Witnesses or Recognitors, who had been summoned, but who were unacquainted with the facts, and substitution of others in their stead 201

Jurors taken from the Country at large, when the facts which they were required to prove were public and notorious; but if there were any known Witnesses of facts, they were returned upon the Jury 202

Distinctions between Echevins and Jurors; and between Compurgators and Jurors 203

According to the Frankish Capitularies, a Freeman residing upon "Dominical" or customary land, was admissible as a Compurgator, but not as a Juror 203

Witnesses or Jurors amongst the Franks, how elected and examined 204

Juries in criminal cases, erroneously supposed to be an Anglo-Saxon institution 205

Part I. PAGE

Distinction between the Anglo-Saxon Compurgators and the Anglo-Saxon Witnesses; the former being always sworn, whilst the latter gave their evidence without oath, except in certain cases, forming an exception to the general rule 205

Custom introduced in the Anglo-Saxon Courts of occasionally selecting some of the best men of the Country, who were named, sworn and examined by the mutual consent of the parties . . . 206

Anglo-Norman Tribunals, incline towards the introduction of Trial by Inquest or Jury: instances thereof 206

1078. The trial of the suit between Pichot, "Vicecomes" of Cambridge, on the part of the Crown, and Gundulfus, Bishop of Rochester 207

1080. Suit for the recovery of the lands of the Church of Ely, decided by the oaths of the Englishmen elected from the Shires, convened at the Placitum held before the King's Justiciars; and who could swear how the possessions were held "on the day when King Edward lived and died" 207

Folkmoot of Pennenden, assembled for the decision of the disputes between Odo, as Earl of Kent, and Lanfranc, Archbishop of Canterbury; no Jurors required, the dispute being a question of law and not of fact 207

Examples of Inquests in the reigns of Henry I. and Henry II., cases in which they were chosen from the oldest men of the County 208

1159—1169. Suit between the men of Wallingford and the Convent of Abingdon 209

Jurors elected by the Sheriff in full County Court 209

Statute of William the Conqueror, introduces trial by "Witnesses" in the particular case of an Appeal brought by an Englishman against a Norman, or vice versâ 209

1176. Assize of Clarendon, enacted by Henry II., re-enacted at Northampton 210

Frankpledge, both seignorial and collective, enforced by these Assizes 210

Inquests to be taken by Twelve Knights of each Hundred, and by the Four Men of each Township, assembled according to the Anglo-Saxon Law, and sworn according to the Norman Law . . 210

1189. Fitz-Aylwin's Assize 211

No Compurgation allowed to the Criminal after the Presentment of an Inquest, but he was forthwith to undergo the Ordeal . 211

Compurgation in Criminal cases, abolished by the Assizes of Henry II., but retained as a special franchise in some boroughs . . 211

5 Richard I., 1194. Assize regulating the mode of electing the Knights of the Hundreds 212

Mode of Trial, as collected from the "Assizes" and the records of the "Curia Regis": The Criminal, on being declared by the Inquests to be "malecreditus," or folc-ungetreu, is adjudged to undergo the Ordeal; if he fails, he is subjected to capital punishment 212

"Assizes" of Henry II. relating to civil trials 212

PAGE Part I.

Inquests or recognitions directed by the Constitutions of Clarendon 212
Assize of "Novel Disseisin" 213
"Grand Assize," which gave the Tenant the option of trying his right by "recognition," instead of defending himself by his Champion 213
Juries, not generally in use in personal actions, in which the Plaintiff usually supported his claim by unsworn witnesses, or the "Secta," whose testimony was rebutted by the Compurgators on the part of the Defendant: nor introduced in the popular Courts of Anglo-Saxon origin, except by virtue of the King's writ . . . 214
Pleas in Manorial and other inferior Courts determined, of common right, by wager of law 215
Attempts of Lords of Manors to compel their Tenants to be sworn on Juries in the Manor Courts, frustrated by the Statute of Marleberge, 53 Henry III. 215
Principle upon which the wager of law was admitted . . 215
Trial by Inquest or Jury, occasionally purchased by the parties, who preferred this mode of trial to the Ordeal or the Duel . . 217
1215. Ordeal, forbidden by the 18th Canon of the fourth Lateran Council 217
Great doubts prevail in England as to the mode of trial to be substituted in the place of the Ordeal. Writ issued 3 Henry III., containing instructions to the Justices respecting the imprisonment or enlargement of offenders, but without giving any positive directions for their Trial 217
Trial by Jury, its progress towards the present form . . 218
Practice introduced of allowing the party appealed or indicted, to put himself upon a Second Inquest, now called the Petty Jury . 218
The Court had no power of compelling the Culprit to abide this mode of trial; until, by the Statute entitled "Westminster the First," 3 Edw. I. the Justices were authorized, in certain cases, to cast the Culprit into the prison "forte et dure" 219
Judgment of "Peine forte et dure" as settled in the 15th century 220
Inquest Trial. Limitations of the royal authority, resulting from the custom 221
Survey of the Kingdom supposed to have been made by Alfred . 221
"Descriptions" or Territorial registers of the Lower Empire, by which the quota of direct taxes was assessed, continued by the Frankish Kings 221
580. Chilperic directs the formation of a new Cadastre . . 221
Domesday Book 221
1085. Great Council held at Gloucester, in which the survey was ordained 221
Domesday survey grounded upon the verdicts of Inquests or Jurors 222
Application and expansion of the principles of Jury trial . . 223
Restraints upon the royal authority, resulting from the necessity of summoning Jurors and of taking inquisitions, before the various branches of the prerogative could be legally exercised . . 223

Part I. PAGE

8 Richard I., Carucage collected in each Shire by the King's Commissioners and Two Knights, (probably elected by the Communitas), and assessed upon oath 224

Taxes upon personal property. Further stages in the mode of assessment, I. By compelling each individual (Earls and Barons excepted) to swear to the amount of his income. (8 John.) II. By summoning an inquest, if the oath of the party was doubted or disputed. (9 Henry III.) III. By discarding the individual oaths, and empanelling inquests for the Townships or Hundreds. (16 Henry III., and from that period to the reign of Edward II.) 224

Trial by Jury, its influence not confined to judicial proceedings; supplies the place of popular suffrage in the earlier periods of the Constitution 225

CHAPTER THE NINTH.

The Sovereign anciently the Supreme Judge of the State . . 228

Prerogative Jurisdiction of the Anglo-Saxon Monarchs over the Tribunals of the Anglo-Saxon States, which were subjected to one Sovereign, without being united or incorporated . . . 228

Downfall of such federative States as have been destitute of a central jurisdiction, correcting and restricting the defects of the popular tribunals 228

United States of America; conflicts of jurisdiction between the Supreme Court and the State Courts 229

Legal Constitution of England, resulting in great measure, from the gradual transfer of the authority of the Chief Magistrate to his Justices, Ministers and Counsellors 229

Judicial functions of the Anglo-Saxon Monarchs, ordinary and extraordinary 230

Pleas of the Crown according to the Anglo-Saxon Law . . 230

The King supplies the defects and moderates the judgments of the popular Tribunals 231

Anglo-Saxon principle, that the King was not to be "sought" until justice had failed at home, retained in the "Writ of Right Close," issued "ubi Curia Dominorum probatur de recto defecisse" . 231

Hamsoken, Flemen firth; explanations of these terms (Note) . . 231

Equitable jurisdiction, first delegated by the King to his Council, and afterwards assumed by his Chancellor 232

The King, the Supreme Conservator of the Peace 232

The four Roman Roads placed especially under his protection, from whence all highways obtained the name of the "King's Highway" 232

Verge of the King's Palace, within which his "Grith" or Peace was to be firmly observed 232

Times and Seasons when the King's Peace was to be kept . 232

King's Peace, how "given" by his command, his writ, &c. . . 233

PAGE **Part I.**

Custom introduced, after the Conquest, of proclaiming the King's Peace upon his accession, and which continued in force during the whole of his reign 233
Judicial Circuits of Edgar 233
The relations of the States composing the Anglo-Saxon Monarchy, resembling the relations between England and Scotland, after the union of the crowns, and before the union of the Kingdoms; or, perhaps, to the Netherlands under Charles Quint . . 233
The Eyres or progresses of the Anglo-Saxon Kings facilitated by the dispersion of the Royal Demesnes, which afforded stations and resting places, where the followers of the Court could consume the provisions or rents in kind, which were not easily transportable from one part of the kingdom to another . . . 234
Administration of justice by the Dukes of Normandy . . 234
Clameur de Haro, explanation of (Note) 234
William the Conqueror causes the laws to be duly observed . 235
Judicial Eyres, discontinued by William the Conqueror . . . 235
Three general Placita held by him every year at the following times and places, viz. Easter, at Winchester for Wessex; Whitsuntide, at Westminster for "Danelage"; Christmas, at Gloucester for Mercia 235
The Conqueror appoints Justiciars or Regents to govern England during his absence, and who administer the law in his stead . 236
1067. Odo, Bishop of Bayeux, the half-brother of the Conqueror, and William Fitz-Osbern first appointed to this office . . 236
Appointment of Justiciars to discharge the judicial functions of the Sovereign 237
..such Justices appointed to aid the King, who might nevertheless resume any portion of his judicial functions when he thought proper 238
Examples of criminal jurisdiction exercised in person by John, Henry III., Edward I., and Edward II. 238
Justices Itinerant, not permanently introduced into the system of legal administration until the reign of Henry II. . . 239
1170. "Barones Errantes," how assigned by Henry II. on his return from Normandy 239
Empowered to make "inquiry" by oath or inquest . . . 240
Articles of Inquiry 240
1170, 14 June. Convention at London 241
1176. Justices Itinerant appointed by Henry II. in the Great Council at Northampton, England being divided into six Circuits . 241
1179. Four Circuits appointed in the Council at Windsor . . 242
Six Justices appointed in the Northern Counties, designated as "Justiciarii in Curia Regis constituti ad audiendum clamores populi" 242
11 Edward I. Ancient separation of Northumbria from the rest of England still indicated by the convention of two Parliaments or Great Councils, simultaneously assembled at York for the Northern Counties, and at Northampton for the Southern Counties . 242

Part I. PAGE

1194. Justices Itinerant appointed by Richard Cœur de Lion, on his return from the Holy Land 242

"Custodes Placitorum Coronæ," afterwards called Coroners, elected in each Shire, who united the characters of representatives of the people and of officers of the King 242

Coroners—Conservators of the Peace 243

Representatives of the Hundreds and Townships before the Justices in Eyre 243

15 Joh. 1213. Four good men and the Reeve, returned from every one of the King's Demesne Towns, and assembled at St. Albans . 243

The King's Peace, how proclaimed 244

Ordinance made by the Justiciars, Prelates and Magnates, that the laws of Henry I. should be kept, and all bad laws utterly abolished, &c. 244

15 Joh. 1213. Convention composed of certain Knights (who had been specially summoned), of the "body of the Baronage," and Four discreet Knights of the Shire, to speak with the King . . 244

Two classes of functionaries established by the ancient constitution for the preservation of the public tranquillity. The Executive, who under the names of Coroners, Conservators of the Peace, Verderers, &c. were the King's Officers, elected by the "Communitas"; and the Inquisitorial, selected from the people, who "presented" or made known the grievances of the State by their verdicts upon oath, but the Conservator of the Peace was confirmed by the King, and the verdicts of the Juries required the assent or judgment of the Crown before they could be acted upon . 245

Magna Charta provides that all bad customs, &c. are to be inquired into by twelve sworn Knights of each County, to be chosen by the probi homines thereof 245

17 Joh. 1215. Writs issued pursuant thereto 245

..and inquests taken accordingly 245

Ratification of the Great Charter demanded of Henry III. by the Barons, in the "Colloquium" held at London in eight days of the Epiphany, 1223 246

Henry III. agrees that the evil customs, &c. shall be inquired into by Twelve sworn Knights in each Shire, the verdicts to be returned before him on the morrow of the Clause of Easter (being the time when the Curia Regis usually assembled) 246

Provisions of Oxford, 1258, by which it was ordained that Four Knights should be elected in every County, who should make inquiry by the Jurors of the Hundreds of all grievances occasioned by the oppressions of Sheriffs, &c. 246

Three "Parliaments" to be held in every year, on the octave of St. Michael, the morrow of the Purification, and the first day of June 247

42 Henry III. 1258. Letters Patent issued pursuant to the Ordinance, directing the election of the Knights, and commanding them to appear in person at Westminster, for the purpose of delivering the inquisitions to the Council or Parliament . . . 247

PAGE **Part I.**

43 Henry III. 1258. Knights thus elected obtain their writs "de expensis" nearly in the form afterwards adopted for the Knights of the Shire 247
Conservancy of the King's Peace 248
Conventions held for that purpose, consisting of the Knights and Freeholders, who were bound to attend in person, of Twelve Burgesses for every Burgh, and Four Men and the Reeve for every Township 248
Array of the Shire, in which each man was armed according to his degree 248
Military Service for the conservancy of the Peace, due by Tenure; "Red Spears" of the North 249
Military Service for the conservancy of the Peace, resulting from allegiance 249
37 Henry III. 1253. Ordinance for the Conservancy of the Peace. Constables to be elected in every Hundred, before whom the Resiants were to be sworn to arms 249
Military Conservators of the Peace, elected by the Communitas of the Shire, and afterwards empowered by the King's commission; required to possess a qualification of land, in default of which they might be removed from their office 249
Authority of the Conservator; empowered to raise the hue and cry, to arrest offenders, but not authorized to summon a Jury or to try the offenders, who were to be committed to prison until delivered according to due course of the law 250
Keepers of the Peace assigned, pursuant to an Ordinance made 48 Hen. III. 1264 250
Conservators directed to cause Four Knights to be elected in each Shire, to treat with the King and with his Prelates and Magnates on the affairs of the kingdom 250
Indications of the continuance of remedial representation, but which gradually merged in the political representation 251
Death of Hen. III. 16 Nov., 1272; Edward I. not recognized until 20 Nov., when his Peace was proclaimed, and from which proclamation the beginning of his reign was calculated . . 251
Convention on the accession of Ed. I., consisting of the Prelates and Magnates, and of four Knights from every Shire, and four Citizens from every City 252
7 Ed. I. 1279. Adam de Stratton, Chamberlain of the Exchequer, impeached by Jurors, returned from all the Shires of England 252
13 Ed. I. 1285. Statute of Winchester 253
Anglo-Saxon customs enforced 253
Constables to present defaults to the Justices assigned pursuant to the Statute, and the Justices to carry up the presentments to the King in Parliament 253
15 Ed. I. 1287. Commissions issued appointing Conservators of the Peace, pursuant to the Statute 253
18 Ed. I. 1290. Two or three Knights to be elected from each County, to advise upon and consent for themselves and the County what

Part I. PAGE

should be ordained by the Earls, Barons, and Proceres. Writ returnable at Westminster in three weeks of St. John Baptist, 15 July 254

..the majority of which Knights consisted of individuals who acted as Conservators of the Peace 254

Difficulties attending the theory, that the Knights of the Shire appeared merely as the representatives of the Tenants in capite, who were not present in person 254

49 Henry III. No returns of Burgesses recorded anterior to those required by the writs issued in the King's name by Simon de Montfort 255

..yet this practice is nowhere noticed as an innovation . . 255

Claims of the Boroughs of St. Albans and Barnstaple to send Burgesses to Parliament 255

Probability that the claims of these Boroughs were grounded upon the ancient remedial representation 256

CHAPTER THE TENTH.

Political Constitution, founded upon the Legal Constitution; the law resulting from the state of the people, and the Political Constitution, from the machinery employed to execute the law . . 258

Many facts anticipated, on the assumption that the reader is familiar with the general features of English history . . . 259

Roman period, its connection with the Anglo-Saxon period of the history of Britain 259

Roman Empire, or Fourth Monarchy, not destroyed by the determination of the Imperial Governments, but continued in and by the States of Western Christendom; the founders of the Barbarian dynasties being the inheritors, within their respective kingdoms, of the imperial power 259

"European character," principally derived from the influence of Roman institutions and Roman laws 259

Ancient British Tribes 260

Ptolemy, general accuracy of his notices 260

Geographical position of the British Tribes uncertain . . 260

Ecclesiastical divisions of France, generally agreeing with the limits of the ancient population 260

Belgic Tribes, their settlements in Britain; probably the refuge-taking tribes of the Triads 260

Cymri, the population of the West 260

The several Tribes subjected to Kings or Chieftains, who were very numerous 261

Clanship; probably subsisting amongst the ancient Britons in the same form as in Ireland and Scotland at later periods . . . 261

"Pencenedyllion," supposed to be the descendants of the primitive Chieftains, who retained the headship of the Clans, without acquiring the sovereignty of the soil 261

PAGE **Part I.**

Royal authority might be exercised by women. Descendible in the female line amongst the Picts 261
Women not admitted to command amongst the unmixed Teutonic tribes 261
Gaul, a confederacy of "Civitates," or States 262
Teutonic confederations, calculated rather for military operations, than for civil government 262
Dissensions of the Britons, and want of political union, though, in some cases, various tribes were combined under one leader . 262
Roman invasion: many British Kings dispossessed of their territories 262
Military Colonies: lands of the Britons confiscated, and granted to the Roman soldiery, to be held by military tenure . . 262
Inferior orders, reduced to the state of "Coloni" or Villeins . . 262
No traces of such spoliations after the reign of Claudius . . 262
Freedom of Rome granted by Caracalla to all the Provincials . 263
Prosperity of Roman Britain 263
Britons adopt the civilization and customs of Rome . . . 263
Traditions concerning the Trojan origin of the Britons, the means of conciliating the Romans 263
Similar traditions in Gaul 263
Roman monuments existing in the Middle Ages, so considerable at York, Caerleon, Carlisle, Hexham, Lincoln, Bath or Aquæ Solis, &c. as to excite the astonishment of the Monkish Chroniclers . 264
Moral influence of architecture as practised amongst the ancients . 264
Subsistence of Druidism, and of British Princes beneath the Roman supremacy 264
Cogidumnus. 265
Kings of Mauritania received their investiture from Rome . . 265
British Kings rule with a similar degree of dependence . . 265
Government of the Roman Provinces, as settled between the reigns of Diocletian and of Arcadius and Honorius, being the period in which the history of Modern Europe properly begins . . 265
The four Prefectures, their division into Dioceses and Provinces, governed by Vicars or Vice-Prefects, Presidents or Consulars . 265
The Comitial dignity 266
The "Comites," at first merely the associates or confidential friends of the earlier Cæsars, gradually assume the character of Privy Councillors, and obtain a recognized rank in the Empire . 266
..receive an allowance from the Emperor, and are divided into classes 266
"Comites," established as a personal nobility by Constantine, who divides them into three ranks; and from which period they were created by special diploma or patent 267
Imperial palace and household; Counts placed at the head of each department 267
The Comes-Stabuli, or Constable 267
Title of Comes sometimes granted without any peculiar office . 267
Counts of the first rank, possessed free entrance into the imperial consistory 267

Part I. PAGE

Title of "Comes" bestowed upon the Proconsuls, &c., for which reason they appear to have been styled the Counts of the Provinces 267
Irenarchs, officers performing duties analogous to the Anglo-Norman Conservators of the Peace 268
Roman Empire, composed of nations which were aggregated together without being incorporated; and who retain their local customs and peculiar laws, both written and unwritten, when not contrary to, or repealed by the general laws of the empire . . 269
Roman settlements originally divided into Colonies, Municipia, and Latin Cities 269
These distinctions, obliterated in practice 269
"Civitates" of Gaul formed out of the ancient Gaulish States . . 269
The "Decuriones" or "Curiales," of whom the "Ordo," "Curia" or Senate of the City was composed 270
Decurionship, hereditary in certain families, resembling the patrician families of Nuremberg, Frankfurt, and other German cities . 270
..but individuals possessing a certain qualification of property, might also be compelled to accept the office, which, though honourable, was also very burdensome; the Decurions being personally and individually liable to make good any deficiency in the quota of taxation assessed upon the city 270
"Principalis," or Senior Decurion, who, after a certain term of service, acquired the Comitial dignity 271
"Primates" and "Honorati," ruling classes of the cities . . 271
Roman "Colleges," i.e. Gilds or Incorporations of operatives and artificers 271
..supposed, according to the later laws, to derive their existence from the authority of the State 271
Municipal Corporations, their constitution (Note) 271
..said to have been first created by Numa 272
Religious ceremonies or mysteries practised in these Societies . 272
Employments hereditary, so that the son of the handicraftsman became a member of the "College" by birth or caste . . . 272
No exemptions or excuses allowed to the male children, and the females compelled to espouse persons of the same avocation; a stranger marrying the daughter being bound to take up the employment of her father 272
Apprentices might be received; but the employment descended to their children, in the same manner as the original members . 273
"Colleges" in which a double bond existed, *Caste*, as before mentioned, and a species of prædial servitude or villeinage, the obligation of carrying on the employment being annexed to land; and the purchaser of the land, if the same was alienated, becoming bound in the same manner as the hereditary operative, as instanced in the case of the "Pistores," who were both millers and bakers; and the "Naviculariі," a species of lightermen 273
Analogies between their employments and the fishermen, &c. annexed as villeins to an Anglo-Saxon manor 273

PAGE **Part I.**

Lands assigned upon condition of fulfilling certain employments (not being agricultural) amongst the Celts of Ireland, and also in the Hindoo villages 274

Law relating to the Roman "Colleges," probably modelled by the Jurists 274

Members of the Colleges bound to reside within the banlieu of their city 274

"Colleges," described by Gaius as minor republics 274

Meetings of the "Colleges" distinct from the meetings of the Curia of the City 274

The Roman Colleges prohibited, at various periods, as dangerous to the State; but notwithstanding which prohibitions they appear to have continued to meet in secret: like the Masons in England, after the statute 3 Henry VI., by which their "Chapters and Congregations were forbidden" 275

Provincial Councils 275

..either ordinary, and held "de more," on a fixed day, and at a certain place, or extraordinary, and specially summoned by the Governor 275

A Council might be held either for the entire Diocese, or for any single Province of the Diocese, or for any single City of the Province 276

Councils of the Provinces or Dioceses usually composed of the Primates of the cities, and of individuals who had filled Prætorian offices (the latter of whom might act by proxy) 276

Difficulty of understanding the precise conformation of the Councils, the laws in the Theodosian Code having been selected for practical use, and not for the purpose of elucidating the constitution of the Empire; this deficiency partially supplied, as to Gaul, by the edict of Honorius (A.D. 418) reviving the meetings of the Concilium of the Seven Provinces held at Arles (previously regulated by the Prefect Petronius), but which had been discontinued in consequence of the calamities of the country 276

Councils of Britain and Spain and the other Dioceses comprehended in the Prefecture of the Gauls, probably very similar to the Council of Arles. Composed of the Bishops, the Counts of the Provinces, the "Judices" of the cities, the "Honorati," or "Curiales," and the "Possessores," or Landholders 277

Provinces of Novempopulania and Aquitania Secunda (Gascony, Poitou, &c.), allowed to supply the places of their Magistrates by special deputies 277

Powers of local legislation possessed by the Council of Arles . . 277

Council of Arles, considered as the Senate of the Seven Provinces. Imperial dignity conferred by the Council upon Avitus (A.D. 455) after he had been saluted Emperor by the legions; in the same manner as practised in similar cases, by the Roman Senate. 277

Seven Provinces. Kingdom of Septimania (Note) 277

Councils of the Seven Provinces, not suppressed after their separation from the Empire. Alaric II. convenes the Bishops and "Electi" of Septimania, at Toulouse, in which Assembly the laws by which the Romans were thenceforth to be governed, were revised,

Part I. PAGE

glossed and re-enacted. Draft of the Code (commonly called the Anian Breviary) prepared by a committee or council of Jurists, both clerks and laymen, presided over by the Chancellor Goaric; and then propounded to the Assembly of the States . . 278

Plenitude of legislative prerogative vested in the Emperor, notwithstanding any power of legislation permitted to the Councils; so that in relation to the Sovereign, the ordinary duty of the Councils consisted in the presentation of petitions to the throne, for the following purposes, viz. redress of abuses, matters of grace and favour, or the alteration or amendment of the laws . . 278

The "Edicts," "Decrees," "Postulates," "Petitions," or "Desires," &c., after having been voted by the Council, transmitted to the Emperor by the Legates, or Representatives of the Province or Diocese, who were elected in and by the Council . . . 279

Facilities afforded by the excellence of the Roman roads and posts 279

Representatives of the Provincials, how received by the Emperor 279

Rescripts issued upon their petitions, though such petitions are not always set forth or stated in the law which was grounded upon them 280

Power of impeachment possessed by the representatives of the Councils 280

Regulations for insuring the unbiassed deliberations of the Councils 280

Examples of rescripts, &c. (Note) 280

Freedom of Debate 281

Petition not to be altered, but to be delivered in its original state to the Prefect, with whom it was deposited until the Legates proceeded to the Emperor 281

Fines for non-attendance 281

Councils composed of Notables, and of virtual representatives of the people 281

Tendency of the Provincial Legations to coalesce into a representative assembly, which might have become the States-General of the Roman Empire; and by which the Empire would have been converted into a limited monarchy, like the Kingdoms of the Middle Ages 281

Such tendency foreseen by Theodosius, who makes laws for diminishing the number of the Provincial Legations 281

Causes which assisted in preventing any increase of the power of the Provincial Councils 282

Veto of the Prefect, who was entitled to "correct" the petitions, or to expunge any matter which might be disagreeable to the Emperor 283

Provincials not enabled (like the English Parliament) to command obedience to their petitions, either by propitiating or annoying the Sovereign 283

Councils, destitute of the power of judicature 283

Taxes imposed by the Emperor, without the concurrence of the Councils, the "Aurum coronarium" only excepted, which was voted by them; and which, in theory, was a voluntary benevolence, though, in practice, it could not be refused . . 283

PAGE **Part I.**

Laws enacted upon the petitions of the Provincials could be repealed at any time by the mere motion of the Emperor, whose power of legislation was undiminished and uncontrolled . . . 284
Provincial Assemblies, in many instances, to be considered as the ancient national governments, which had been partly remodelled by the Romans 284
Federative governments of the Greeks continued or revived by the Romans 284
Conventions or General Assembly of the Gauls, held by Augustus 284
Council of Arles, formed by the continuance of these assemblies, and not by the grant or concession of Honorius 284
Objections to this assertion answered 285
Alterations produced by the establishment of Christianity, and the introduction of the Prelates into the Secular Councils . . 285
Differences arising from local customs not sufficiently extensive to disturb the general scheme or *platform* of the Roman Provincial Constitution 286
Britain: Provinces into which the Diocese was divided . . 286
Paucity of information relating to the Roman administration in Britain, the Theodosian Code containing only a single rescript concerning Britain, but which establishes the fact of the municipal corporations existing on the same plan as in the other parts of the Empire 286
Roman Provinces of Britain (Note) 286
Richard of Cirencester. Doubts (perhaps unfounded) as to the authenticity of the Itinerary attributed to him (Note). . 286
Inscriptions evidencing the subsistence of the authority of Cogidumnus as a vassal king, and that the "Colleges" of Operatives were established in his dominions according to the Roman law . 287
Roman inscriptions, their importance in elucidating the history of Britain (Note) 288
Councils of Roman Britain, analogous to the other Councils of the Prefecture of the Gauls 288
Military government of the Provinces 288
Soldiery, holding lands upon condition of performing military service 288
..this practice reduced into a system by Sylla, and much extended under the Triumvirate 288
Lands of the inhabitants of the Italian cities confiscated, and re-granted to the Veterans 289
British territories granted in the same manner to the Roman soldiery 289
Feudal tenures, their origin to be traced to the grants made to the Limitanean or Riparian soldiery 290
Alexander Severus (A.D. 222) and Probus (A.D. 276) adopt the system upon an extended scale; lands so granted, descendible to male heirs only, and not alienable 290
Fortified posts and stations of the Limitanean countries; "Castella" and "Burgi" 290

Part I. PAGE

Roman Walls in Britain 291
Roman castles upon the Rhine, repaired and enlarged in the Middle Ages, as at Heidelberg, &c. 291
The Teutonic term "Burgh" derived from the Latin "Burgus" . 291
Terms applied by the Celts and Teutons to fortifications of brick or stone, derived from the Latin language 291
Burgus—etymology of the term (Note) 291
"Milites Castellani," and "Burgarii" ("Burhware," or Burgesses), soldiers stationed in the Castles and Burghs, and holding the adjoining lands 292
Lands granted by the Romans to the Barbarian *Læti* (i.e. *Leute*, or *Leod*), upon condition of performing military service . . 292
A.D. 241—276. Franks, their first invasions of Gaul under Aurelian and Tacitus 292
A.D. 291. Territories ceded to the Franks, which they accept as *Læti*, or feudatories of the Empire, where they lived apart from the other inhabitants, under their own Chiefs 292
Vandals, Marcomanni, and Quadi settled in Britain 293
Upwards of forty cohorts of Barbarian Auxiliaries in the northern districts, principally near the Roman walls 293
Lætic Cohorts—Frankish Læti settled in Armorica (Note) . . 293
Tungrians brought in by Agricola to carry on the war against Galgacus: their descendants continue stationed at or near Castle Cary, Cramond, &c. 294
Conditions of the Limitanean feuds 294
Oath of fidelity exacted from the soldiers 294
Tabulæ honestæ missionis (Note) 294
"Benefices" granted by the earlier Emperors 295
Probability that the conditions annexed to the Limitanean grants were not first introduced by Alexander Severus, but that he only gave more stability to the system 295
Valentinian allows the Veterans to appropriate any common or vacant land (i.e. the possessions of the Celtic tribes), which was held free from rent or tax, but subject to military service . . . 295
Sons of the Veterans, &c. compelled to join the Army . . 296
No exemptions allowed 296
..nor could any alienation defeat the condition upon which the land was held 296
"Magistri Militum," or supreme commanders of the army . . 296
Provinces entrusted to the Military "Comites" and "Duces" . 296
Tautomede, Duke of Dacia Ripensis 297
Britain subject to the Magistri Militum of the Prefecture of the Gauls, who resided at Arles or Trèves 297
Divided into three Military Provinces, respectively governed by the "Comes Britanniæ," the "Comes litoris Saxonici per Britannias," and the "Dux Britanniarum" 297
Military Counts and Dukes, the Magistrates as well as the Commanders of the soldiery 297

PAGE Part I.

Military constitute a distinct and ruling "Estate," in consequence, as well of their privileges, as of the right which they assume of electing an Emperor 298

Barbarian nations, their policy greatly influenced by the Roman institutions. Reasons for doubting the accuracy of Dr. Robertson's opinions respecting the changes consequent upon the downfall of the Roman Empire 298

Founders of the Barbarian dynasties endeavour to govern as Roman Emperors 298

Clovis and Theodoric. Roman institutions preserved in the Barbarian Kingdoms 298

Early approximation of the Teutons to the Romans 299

Royal dignity bestowed upon Ariovistus by Cæsar 299

Merobaudes, the Frank, "Comes Domesticorum," and "Magister Militum" 299

Barbarian Sovereigns, reigning with the rights of the Roman Emperors over their Roman subjects, whom they were entitled to govern according to the forms and maxims of the Imperial law, and which domination they gradually imposed upon their own people 299

Causes which facilitated this extension of the royal power . . 300

Barbarians, few in number when compared to the Romanized population 300

Absolute authority possessed by the Frankish sovereigns over their subjects, though Clovis himself was not able to claim the vase of Soissons from the soldiers 301

Provinces governed by Counts, who, as the delegates of the imperial power of the King, were the judges of all the inhabitants . 301

Reasons for supposing that this office was usually bestowed upon the hereditary leaders of the Barbarian population, and that the two kinds of authority, the Vicarial or delegated, and the hereditary or patrimonial, coalesced, the former being *attracted* by the latter 301

European States of the Middle Ages all agree in the theory, that the King is the maker of the *law of the State*, whilst, in the component parts of the State, powers of legislation may be discerned which are not dependent upon the Monarch 302

The State, *as a whole*, governed by an authority analogous to the Imperial authority, though each Teutonic population, taken distinctly, is governed by the King with an authority analogous to that of the older Teutonic chieftains 302

CHAPTER THE ELEVENTH.

"Tyrants" of the Lower Empire 304

Impropriety of this designation, if intended to designate an illegal usurpation of power, the succession to the Empire not being guided by any fixed principles, so as to furnish any consistent definition of a legitimate Emperor 304

Part I. PAGE

Success, the real standard of legitimacy, as instanced in the case of Aurelian 305
The "Thirty Tyrants" 305
A.D. 261—268. Empire of the Gauls under Posthumus . . . 305
A.D. 271—274. Emperors of the Gauls: Lollianus, Valerianus, Marius, Tetricus 306
Tendency of the Roman Provinces to separate themselves from the Empire, and to constitute themselves into distinct States . 306
Roman Emperors, their government not supported by opinion or feeling 306
Barbarian origin of the great majority of the Roman Emperors . 307
Galerius the Dacian 307
Provincial Emperors to be considered as national sovereigns, and as the precursors of the Kings of Western Christendom . 307
A.D. 285. Insurrections of the Bagaudi in Gaul, in the second year of the reign of Diocletian: described as rebellious peasants, and designated as robbers, but probably the inhabitants of the open country, or Romanized Gauls, who were endeavouring to render themselves independent, without uniting to the aristocracy of the "Civitates" or to the soldiery 307
A.D. 285. Ælianus and Amandus, leaders of the Bagaudi, assume the imperial title 308
A.D. 407—441. Bagaudi still continue as a very powerful party in Gaul and Spain 308
Castle of the Bagaudi, now St. Maur. Medals coined by the Emperors of the Bagaudi (Note) 308
A.D. 409. assist the Armorican Provinces in rendering themselves independent, and in the establishment of the Frankish monarchy 309
The first "Tyrant" of Britain in the reign of Probus . . . 310
A.D. 288. Carausius, the Menapian 310
..opposed to the Franks and Saxons 310
Bonosus, his descent (Note) 310
Carausius becomes Emperor of Britain 311
Type of the wolf and twins found upon the medals of Carausius, and copied on the coins of Ethelbert, the "Bretwalda," or Anglo-Saxon Emperor of Britain 311
"Arthur's Oven," on the banks of the Carron, supposed to have been built by Carausius 312
A.D. 293. Carausius slain at York by Allectus, who succeeds to the Empire of Britain 312
Accounts of Arthur's Oven; its similarity to the "Nuraggi" of Sardinia (Note) 312
Franks (under which name the Saxons were anciently comprehended) settled in Britain by Carausius 313
A.D. 297. Allectus defeated and killed 313
A.D. 305. Constantius Chlorus becomes master of Britain, which, upon the abdication of Diocletian, is assigned to him, together with Gaul, Italy, Africa, and Spain; but he resigns the three last-mentioned realms 313

PAGE **Part I.**

Constantius married to Helena, said to be the daughter of a British Prince 313
Britain said to be the birth-place of Constantine the Great . 313
A.D. 306. Constantine the Great proclaimed Emperor at York, upon the death of Constantius, his father 313
A.D. 350. Magnentius, perhaps a Briton, Emperor of Britain and Gaul, allied with the Saxons 314
A.D. 367—369. Valentinianus, or Valentinus, assumes the Empire in Britain 315
A.D. 383. Maximus, Emperor of Britain, his descent, according to the Cambrobritons, from Leoline, the uncle of Constantine the Great 315
A British Colony established by Maximus in Armorica, in which country earlier settlements of Britons had already taken place. Maximus grants a part of the country to Conan Meriadoc . 316
Constant intercourse between the insular Britons and the Britons of Armorica, the latter country being a place of refuge into which the inhabitants of Great Britain fled from their enemies . 316
A.D. 388. Maximus defeated and slain at Aquileia by Theodosius; but his descendants continue to reign in Britain as the Princes of Reged, Strath Clyde, &c. 317
Saxons: reasons for supposing that they had established themselves in Britain before the arrival of Hengist and Horsa . . 318
The "Saxon Shore" 318
A.D. 367. New reinforcements of Saxons invade Britain, and are defeated by the Count Theodosius, the father of the Emperor, and again by Stilicho 319
A.D. 407. But the attacks of the Barbarians continue; and the Romanized Britons elect Marcus as their Emperor; he is succeeded by Gratian and Constantine 320
The Britons, after the death of Constantine, defeat the Saxons, and become independent of Rome 321
A.D. 430. Saxons continue to carry on the war in Britain. Hallelujah victory 322

CHAPTER THE TWELFTH.

Anglo-Saxon history, its sources anterior to the introduction of Christianity very obscure, consisting principally of fragments of poetical narratives and of genealogies 323
Metrical Genealogies of the Gael 324
A.D. 488. Eric, surnamed Æsc (i.e. *Ash-tree*), the son of Hengist, an Ealdorman of the Jutes, acquires the dominion of Kent . 326
Oiscingas or Uscingas, Kings of Kent 326
A.D. 449. Isle of Thanet or "Ruim" granted by Vortigern to Hengist (i.e. *War-horse*, or *Stallion*), and Horsa (i.e. *Horse*, or *Mare*), Ealdormen of the Jutes, upon condition of performing military service, in

Part I. PAGE

same manner as the Romans were accustomed to make similar donations to the Barbarian Læti 326
Dissensions between Aurelian (or Aurelius Ambrosius) and Vortigern, the former descended from one of the Roman Emperors or "Tyrants" of Britain 326
Hengist and Horsa: poetical (or fabulous) accounts of their settlement in Britain adopted by the Chroniclers as history. Their names only poetical epithets 327
Settlements of the "Three tribes of Germany" on the shores of Britain; distinct enterprises of independent adventurers . . . 329
Britons: their general policy not affected by the early settlements of the German tribes 329
Aurelian, or Aurelius Ambrosius, supposed to be the individual in whose person the succession of the Western Empire was continued 330
520..defeats the Saxons at the Mons Badonicus, at or near Bath 330
477—490. South Saxons: their kingdom founded by Ella . . 330
Ella, the first English "Bretwalda," or Emperor of Britain . 330
494—508. Cerdic and Cynric, "Ealdormen" of the Old Saxons, found the kingdom of Wessex 331
501. Geraint ap Erbin slain at Llongborth by Porta, Bieda and Mægla 331
The Hampshire Avon, the original boundary between the Saxons and the Britons of the West 332
Arthur not named by Gildas, although there is no reason to doubt his existence, the scenes of the battles ascribed to him by Nennius, being, in many instances, identified 332
Constantine of Damnonia (Note) 332
Arthur: his mythological character; his history excites the scepticism of the Monkish writers of the Middle Ages 333
552. Cynric conquers Sarum 334
571. Cuthwulf establishes himself north of the Thames, from which establishment this Saxon kingdom acquired the name of Wessex i.e. in relation to Middlesex 334
Slaughter of the Kings of the Western Britons 334
577. Gloucester, Cirencester and Bath taken by Cuthwine and Ceawlin, but probably regained by the Britons 334
584. Battle of Fethanleagh: Cuthwine slain, and progress of the Saxons checked by the Britons 335
591. Angles and Britons unite against the Saxons, and, with the aid of the Scots, defeat them at Wodnesbeorg, or Wodensdike (Wilts) 335
Ceawlin expelled from his kingdom 336
Roman tactics and modes of warfare retained by the Britons . 336
614. Battle of "Beandune"; Britons defeated 337
625—656. Depression of the power of Wessex; harassed by Penda, King of the Mercian Angles (probably allied to the Britons), and also compelled to submit to the supremacy of Edwin and Oswald, of Northumbria 337
626. Wessex contains many states whose rulers assume the royal title; five slain in battle with Edwin 337

PAGE **Part I.**

658. Britons, subjugated by the Saxons, make a great effort to recover their liberty; defeated by Cenwealh in the great battle at Penn (Devonshire), by which their power was entirely broken 337
676—680. Cadwalader Bhendyghed, the last of the British Sovereigns who claimed the title of supreme Monarch of Britain, resigns his Crown 338
681, 682. Confederacy of the Britons against Centwine; he defeats them totally; some parts of the population (or more probably of the nobility) take refuge in Armorica 338
Damnonia, Dyvnaint, or Deunan (Devonshire), conquered as far as the Exe 339
710. Geraint, King of the "Wealas," defeated by Ina, King of Wessex 339
688, 689—728. Ina, King of Wessex; uncertainty of his origin . 339
North Wales, the whole of modern Wales known by this name (Note) 339
Contradictions in or relating to the history of Ina (Note) . . 339
827. Egbert subdues all Britain south of the Humber; overruns the whole of the British territories 340
835. Danes land in "West Wales"; are joined by the Britons; defeated by Egbert 341
900. Britons of the West wholly subdued, but continue to form the great mass of the population of the Shires of Dorset, Somerset, Wilts and Devon, which were therefore known by the collective name of the "Wealhcynn," i.e. the *Welsh kind*, or *Wallishrey* . 341
926. Caer Isk, or Exeter, inhabited jointly by the Britons and Saxons until the reign of Athelstane; he expels the Britons . . 341
Kernau, or Cornwall; its aristocracy at the time of the Conquest, English, the people, British 342
Exeter; Malmesbury's account of its conquest: continues a free city under the supremacy of Wessex (Note) 342

CHAPTER THE THIRTEENTH.

Obscurity of the history of the Britons of the Eastern parts of the island. Litus Saxonicum, afterwards Essex and East Anglia, perhaps colonized by the Saxons before the arrival of Hengist and Horsa 343
Uffa, the first King of East Anglia, from whom the monarchs of that country acquired the patronymic of "Uffingas" . . . 344
East Anglia colonized by two great tribes, the North Folk and the South Folk 344
Ancient aspect of the country; divided from the rest of Britain by marsh-lands, rivers, and the Devil's dyke 344
Venta Icenorum, now Caister, near Norwich 344
Anglo-Saxon Romances concerning the Kings of East Anglia (Note) 344
Kingdom of Essex. London, the era of its conquest by the Anglo-Saxons entirely unknown. No evidence that this city was ever incorporated in any of the ancient Anglo-Saxon kingdoms . 345

Part I. PAGE

527. Ercenwine, the son of Uffa, or Offa, supposed to be the first King of the East Saxons 345
British sovereigns of the North, or "Teyrnedd-y-Gwgledd," many of whom traced their descent from Maximus, or "Maxim Wledig" 346
British Pedigrees to be received as Historical Testimony, notwithstanding their imperfections 346
Celtic title of Tiarna or Teyrn (Note) 346
Six principal British tribes inhabiting between the Humber and the Forth 347
After the erection of the Roman walls, the tribes included between these boundaries supposed to have acquired the name of the "Mæatæ" 347
The double principle of government in the states of the Middle Ages: the *units*, or communities, retaining more or less of their barbarian policy, and the general government of the whole state inclining towards the Roman policy 347
The Picts, probably Britons, who, having been subjected by the Romans, became so much estranged from the Romanized Britons as to appear a distinct nation 348
1138. Picts compose a part of the Scottish Host in the battles of Clitheroe and of the Standard 348
..after which they suddenly disappear 349
No traces of them in Scotland, except the legendary tales of their ferocity 349
Picts and Romanized Britons to be compared to the Ceylonese and Cingalese 350
The Scots first mentioned in conjunction with the Picts . . 350
Scots settled in Erin, or Hibernia, the same race as the Gael of the present day 350
Scotia, the name given to Ireland (Note) 350
North Britain acquires the name of Scotia Nova 351
Reuda, celebrated as the leader of a powerful clan of Scots, probably those who joined with the Picts in the invasion of Roman Britain 351
503—506. Loarn and Fergus, chieftains of the Scots of Argyle, from the latter of whom descended the Scoto-Pictish kings . . 351
Early intermixture of the Scots and Picts 352
Traditions concerning the early history of the Picts and Scots, as preserved by Bede 352
Probability that many tribes of the Picts were occasionally subjected to the Scots 353
Partial subjection of chieftains, compatible with the continued existence of the clan governments 353
Britons, Picts, and Scots, all subjected, at various intervals, to the English or Anglo-Saxon empire 353
North Britain much harassed by the Saxons from the time of Carausius 354
Octa and Ebusa said to have settled beyond the Humber, about the time of the conquest of Kent 354

PAGE **Part I.**

..but the Saxons are resolutely opposed by the Britons, and only form isolated settlements 354
Invasions of the Angles, obscurely noticed in the Scandinavian sagas 355
Double geographical nomenclature in countries subject to a foreign political supremacy 355
Bernicia and Deira, notices concerning these states (Note) . . 355
The eastern coasts between the Humber and the Forth, how divided 356
Berneich, or Bernicia, extends from the Tyne to the Forth, including many states, such as Gododin, afterwards Lothian, &c., and in which Ida establishes himself about 547. Ida considered as the first king of the Northumbrian Angles 356
Deur, or Deira, from the Tyne to the Humber 356
500. York taken about this time. Archbishop Samson settles in Armorica, where he founds the See of Dol 356
Genealogies appended to Nennius, their value (Note) 356
559, 560. Ella, son of Yffi, or Uffi, King of Deira, obtains the supremacy of Bernicia 357
Edwin, son of Ella, expelled by Ethelfrith, son of Æthelric, is received by Redwald, king of the East Angles 357
592—616. Ethelfrith married to Acca, the daughter of Ella, and sister of Edwin 357
Wars between the West Saxons under Ceolwulf and the Angles . 357
617. Battle of the Idle. Ethelfrith killed. Edwin succeeds to the whole of Northumbria. Expels the Athelings, the sons of Ethelfrith, who take refuge amongst the Picts and the Scots. Eanfrid, one of them, becomes the father of Talorgan, king of the Picts 358
617—633. Edwin, Bretwalda. All the Saxon kingdoms (except Kent) subjected to him. He rules over the Scots and Picts . . 358
Elfet, or Elmet (in modern Yorkshire), a British principality, conquered by Edwin 358
Government of Edwin. His conversion. He uses the "Tufa," or Roman ensign of dignity 358
Limited authority of the sovereigns of Northumbria. The Ealdormen act as they think best in their own dominions. Blecca, Ruler of Lincoln, adopts Christianity. Penda, sovereign of the Middle Angles and South Humbrians, refuses 359
Penda allies himself to Ceadwalla, king of the Western Britons, who join their forces against Edwin 359
Mercia: great obscurity of its early history 359
Mercians, Middle Angles, and South Humbrians, probably a mixed race 359
633. Edwin defeated and slain by the Britons and Mercians at Heathfield 359
633, 634. Osric and Eanfrid succeed, respectively, to Deira and Bernicia 359
634, 635. Successes of Ceadwalla, who occupies York, and probably the whole of the kingdoms of Northumbria. The Britons view him as the destined restorer of their monarchy, but he is killed by Oswald, at "Denisesburn" 360

CHAPTER THE FOURTEENTH.

Part I. PAGE

Oswald of Northumbria regains all the authority of his predecessor. The "Four nations" of the island acknowledge him as Bretwalda or Emperor 362

642. Oswald defeated and slain by Penda, at Maserfelth. Oswio, his brother, succeeds to Bernicia, and afterwards to Deira, obtains the authority of Bretwalda, subdues the Picts and the Scots 362

Cumbrian kingdoms; the British States on the north-western side of Britain, including Strath Clyde, Reged, and Southern Cumbria. Sometimes called the kingdom of Strath Clyde, this being the predominant state 362

Alcluid (afterwards Dunbreton or Dumbarton), the capital of the Cumbrian kingdoms 362

Eneon Urdd, King of Cambria and Cumbria 362

Rhydderch Hael, or Roderick the Munificent 363

British states dependent upon the "Regnum Cumbrense," and stretching to Northumbria 363

617—625. Elmet conquered by Edwin 363

Leeds the frontier town between the Britons and Anglo-Danes . 364

Britons retain possession of the country from the Clyde to the Dee 364

671. Picts under Bernhaeth rebel against Ecgfrid, and are totally defeated by him 364

685. Carlisle bestowed by Ecgfrid upon St. Cuthbert; Cartmel, in Furness, with the Britons belonging to the same, also granted by him to the Bishops of Lindisfarne 365

Ecgfrid defeated and slain by the Picts 365

750. Kyle conquered by Eadbert, King of Northumbria . . 365

756. He also conquers Alcluid, with the aid of Unnust, King of the Picts 365

869, 870. Alcluid destroyed by the Danes 366

Inhabitants of part of Strath Clyde emigrate to North Wales . 366

921. Britons of Strath Clyde and Cumbria submit to Edward the Elder, and accept him as their Lord. Edward is styled King or Ruler of the Britons 367

Britons and Scots perhaps occasionally subjected, in early periods, to the same monarchs; Gabran and Aidan being inserted by both nations in their regal lines 367

603. Aidan opposed to Ethelfrith in the battle at Stanmore; styled "*Bradawg*," or the Perfidious, by the Britons; probably a chieftain who had obtained the supremacy of some tribes or clans of Britons and Scots, and who contested the supremacy of the chieftain who governed other clans of the Scots 367

Contradictions of the Scottish and British writers (Note) . . 367

Bile, the son of Elphin, King of Alcluid, probably of Pictish race 368

Daughter of Kenneth Mac Alpin married to Run, King of Strath Clyde 368

Donald, brother of Constantine, the son of Aedh, King of the Scots and Picts, chosen or appointed King of Strath Clyde. Upon his

PAGE **Part I.**

death it is granted to his son, Owen or Eugenius, to be held as an apanage by the Tanaist or heir apparent of the Scottish monarchy, until he should obtain the crown 368
Scottish Cumbria (Note) 368
937, 938. Eocha, or Eugenius, with Constantine, and other kings of the North, in the great battle of Brunnaburgh, in which they are defeated by Athelstane 369
945. Donald, son of Eugenius, rebels against Edmund, is defeated, his sons are blinded by the victor, he escapes and dies a pilgrim at Rome 369
Intermixture of the Celtic and Scandinavian nations in the north of Britain (Note) 369
Cumbria granted by Edmund to Malcolm, King of Scots, upon condition of military service. Malcolm transfers the kingdom to Indulf (afterwards King of Scots), the Tanaist, according to the rule of succession established as before mentioned 370
Indulf appointed Regulus of Cumbria 370
Further remarks on the history of Donald (Note) 370
Indulf repeats his homage to Edred, becomes King of Scots, upon which Cumbria passes to Duff, elder son of Malcolm . . 371
970—974. Malcolm Mac Duff, or Malcolm II. of Cumbria, accepted as Regulus by Edgar; attends his court as a vassal, as appears by his signatures to Edgar's charters 371
974. Malcolm, one of the Subreguli performing homage at Chester to the Basileus of Britain 371
Malcolm II. of Scotland and III. of Cumbria, son of Kenneth, Regulus of Cumbria 371
Performs homage to Ethelred, but refuses to contribute to the Danegeld 371
1000. Ethelred considers this refusal as a violation of his oath of fealty, and attacks Cumbria 371
Kingdom of Westmere (Note) 371
Malcolm III. of Cumbria, surrenders the kingdom to his grandson, Duncan, but without withdrawing his due fealty to Ethelred . 372
Duncan, Regulus or King of Cumbria, refuses allegiance to Canute, whom he considers as a usurper of the English crown . 372
1032. Canute marches against the Cumbrians and Scots, and reduces them to obedience 372
Duncan submits to perform homage to Canute 372
Upon the accession of Duncan, as King of Scots, Cumbria passes to Malcolm Canmore, his son and heir apparent, according to the rules of lineal succession which now began to obtain amongst the Scots 372
1056. Malcolm Canmore, after having been expelled by Macbeth, restored to the possession of Lothian and his rights as King of Scots, by Edward the Confessor, retains Cumbria in his own hands, he having no children at that time, and the law of Tanistry being disused 372
..refuses to acknowledge William the Conqueror 373

Part I. PAGE

1072. Malcolm performs homage to William the Conqueror at Abernethy, but does not obtain a restitution of Cumberland or Southern Cumbria 373

Strath Clyde, and those portions of Cumbria beyond the modern boundary of Scotland, i.e., the shires of Dumbarton, Renfrew, Lanark, &c., in possession of the Scottish monarchs, considered as the Cumbrian kingdom, and generally bestowed upon the heir apparent, or upon some younger branch of the royal family 373

1118. North or Scottish Cumbria, or Strath Clyde, &c., still considered as a distinct state, when held by David, son of Malcolm Canmore, and brother of Alexander, then King of Scots 373

David's government of Cumbria (Note) 373

1152—1165. "Wallenses," a distinct race in the reigns of Malcolm the Maiden and William the Lion 374

Wallenses of Strath Clyde, a barbarous race. John, Bishop of Glasgow, afraid to accept his charge, on account of the ferocity of his flock 374

British names of places continue in Strath Clyde until the twelfth century, when they give way to Saxon or Lowland Scottish names 375

1305. "*Brets*" retain their peculiar laws until they are abolished by Edward I., in his Union Parliament 375

About 1072. Cumberland granted by the Conqueror to Ranulf de Meschines 375

Carlisle excepted from this grant 376

William Rufus plants a colony of "Ceorls" from the South in and near Carlisle. Reasons for supposing that they were the inhabitants of the townships thrown into the New Forest 376

Memorials of the existence of the ancient British population of Cumbria, names of mountains and rivers, and traditions 376

Names of towns and villages, Saxon; of rivers and woods, British (Note) 377

CHAPTER THE FIFTEENTH.

Cambria or Wales. Country of the "North Welsh," or "Mediterranean Britons." Nature and boundaries of the country . . 378

Cambria severed into small communities 379

British Chronicles destitute of dates. Gildas said to have cast all the authentic writings concerning Arthur into the sea 379

Eneon Urdd 379

Conference between the British Bishops and Augustine . . . 379

Augustine's oak (Note) 379

Kingdom of Gwent; first partially conquered by the Mercians, in which they establish the kingdom or state of the Hwiccas, or Magesetania 380

Chester taken by Ethelfrith 381

Conquests of Edwin 381

PAGE Part I.

Formation of the kingdom of Mercia, or the Marches . . . 381
Offa, his victories over the Britons. Conquers the greater part of Powys; casts up a great fortification (Offa's Dyke, or *Clawdh Offa*), which separates his acquisitions from the British territories . 381
Morva Rhuddlan (Note) 381
800—809—811. Egbert; his armies advance as far as Snowdon; he conquers the commot of Rhyvonioc in Denbigh, and ultimately reduces the whole of the country 382
Subjection of the British princes to the Anglo-Saxon kings . . 382
809. Subjugation of the Britons by Egbert 382
843—876. Roderick the Great, divides the superiority of Cambria between his three sons 382
British kings become the vassals of Alfred and Edward the Elder 383
926. Athelstane causes the British kings to perform homage to him at Hereford 383
1063—1064. Blethyn and Rhywallon appointed kings of the Welsh; become the vassals of Edward the Confessor 384
Tributes rendered by the Welsh to Edgar and to Athelstane . 384
Amount of such tribute, as stated in the Welsh authorities . 384
The tribute of wolves' heads 384
1064. Promise of the Welsh princes to pay the accustomed tribute 385
"Under-kings" of the Welsh take the oaths of fealty, and engage to "aid" their Anglo-Saxon superior, i.e., to perform military service 385
Military service. Llewellyn, King of Demetia, performs such service in the host of Edmund, whom he assists against the Cumbrian Britons 385
"Mechdeyrn ddyled," a relief paid to the "King of London" (Note) 385
Cymric or Welsh Reguli attend the Witenagemots of the Basileus 386
Athelstane holds a convention or Witenagemot, attended by no other laymen except the British Subreguli 386
Jurisdiction of the court of the English kings over the British princes. Hoel Dda compelled to restore the commots of Ystradwy and Ewias to Morgan-hên, by the judgment of the court of Edward the Elder 386
Britons of Lloegria amalgamate with the Saxons 386
Proofs of the density of the British population 386
East Anglia infested by British or Welsh marauders as late as the reign of Canute. Hereford considered to be in Wales . . 387
The Western shires, or Wealhcynn, i.e., Somerset, Dorset, Devon, &c.; state of their population 387
Legend of St. Guthlac (Note) 387
British population of Exeter 388
Division of the city between the Saxons and Britons 388
The compact between the English and Welsh *Deunsetas*, or inhabitants of Devon 388
English Talgarth and Welsh Talgarth (Note) 388
The Wealh Gerefa, the officer by whom the king's dues were collected from the Britons 389

CHAPTER THE SIXTEENTH.

Part I.

PAGE

367, 430. The Saxons, the allies of the Picts and Scots, when these nations invaded the South of Britain 390
Picts, Britons who had not become Romanized 390
617—670. Picts and Scots subjected to Edwin, Oswald and Oswio, the Northumbrian Bretwaldas 391
Pictish succession deduced through the mother, not through the father 391
Plurality of husbands amongst the ancient Britons . . . 391
Facility of divorce amongst the Britons of Wales . . . 391
Eanfrid, the son of Ethelfrith, takes refuge amongst the Scots and Picts. Becomes the father of Talorgan, King of the Picts . 392
670. Picts rebel against Ecgfrid 393
Retrocession of the power of the Angles after the death of Ecgfrid 393
757, 758. Picts and Scots, subjects of Eadbert 394
Eocha, King of the Scots, married to Urgusia, a Pictish Princess, by whom he has Alpin 394
Kenneth, son of Alpin, subdues the Picts, who are united to the Scots 394
Erroneous opinion of the total extirpation of the Picts . . . 395
Passages from the Irish Chronicles relating to the Pictish Kings (Note) 395
Period during which the superiority of the Anglo-Saxons over the Scots was suspended 396
Edward the Elder, Lord and Superior of the Scots . . . 396
924. The King of the Scots accepts him as his "Father and Lord" 396
Athelstane, Superior of the Scots, whose King, Constantine, is "ruled" by him 396
934. Confederacy of the nations of the North against Athelstane 396
Constantine defeated by Athelstane 396
Submission of Constantine to Athelstane. Constantine attends the Court of Athelstane as a Subregulus 397
937, 938. Battle of Brunnaburgh 397
945. Cumbria granted by Edmund to Malcolm of Scotland, to be held upon condition of Military Service 397
946. Oath of fealty from the Scots exacted by Edred . . 397
953—961. Scots frequently invade Lothian. Edinburgh taken by Indulf 398
971. Lothian granted to Kenneth by Edgar, to be held by Homage, Suit of Court, &c. 398
Conditions upon which Kenneth received investiture of Lothian, Homage, &c. 399
Manors granted by Edgar to the Scottish King 399
971. Kenneth, by the style of *Rex Scottorum*, or *Rex Albaniæ*, attends the Witenagemot of Edgar 399
Authenticity of the charter of Edgar vindicated (Note) . . 399
974. Kenneth repeats his homage to Edgar at Chester, with the other Vassals of the English crown 400

PAGE **Part I.**

1020. Kenneth, by the foregoing transactions, becomes Lord or Earl of Lothian. Further cession or confirmation made by Eadulf Cudel, Earl of Northumbria 400
1033. Canute subdues the Scots. Malcolm, and the other Scottish Kings, perform homage to him 400
1056. Malcolm, by the aid of Edward the Confessor, is placed upon the Scottish throne. The kingdom of Scotland given by Edward to be held of him 401
Progress of the Scoto-Saxon Kingdom 401
Malcolm Canmore entitled to govern Lothian as a feudal Lord, or territorial Sovereign, while his authority over the Gael, his own people, was merely personal as a Ceancinnith, or Chieftain by blood or lineage, an authority which did *not* give him any right to be considered as a territorial sovereign 401
Separation of Scotia and of Lothian—of the Celts and Saxons—though united under one sovereign 402
Probability that Lothian and the Lowlands first acquired the name of Scotland from the English (Note) 402
Fordun's vituperation of the Gael (Note) 402
Scottish Princes, anterior to the Conquest, to be placed on the same level as the Rulers of the Cymri 403
Scottish Lowlands, after the Conquest, to be considered as a portion of the Anglo-Saxon empire, of which William possessed the superiority 403

CHAPTER THE SEVENTEENTH.

Administration and organization of the Carlovingian Empire . . 406
Explanations of the ancient Anglo-Saxon Constitution afforded thereby 406
Influence of Charlemagne on Britain 407
790, 795. Kings of the Scots submit to Charlemagne . . 407
808. Eardulf, King of Northumbria, restored by Charlemagne . 407
Charlemagne seeks to obtain a daughter of Offa in marriage for his son Charles. Offa refuses, unless Charlemagne will bestow his daughter Bertha upon Ecgfrith. Rupture between the two potentates 409
Correspondence between Charlemagne and Offa (Note) . . 409
Alcuin's correspondence, his embassy to Britain 410
Apprehensions entertained by Offa, in consequence of Charlemagne's real or supposed designs 410
Suspicious appearance of the conduct of Charlemagne . . 411
Charlemagne receives the Anglo-Saxon refugees 411
786. Accession of Beorhtric, King of the West Saxons. The Crown claimed by Egbert, who takes refuge, first in the dominions of Offa, and afterwards in Gaul 412
799, 800. Egbert continues in Gaul, until he obtains the Crown of Wessex 412

Part I. PAGE

Egbert instructed in the art of government during his residence in Gaul, then considered as excelling all other regions of Christendom in civilization 412

Carlovingian Empire. Imperial dignity bestowed upon Charlemagne, in order that *Christendom* might be united under one head against *Heathendom* 413

Charlemagne not to be considered (according to the common theory), as the successor of Augustulus, but as created Emperor to supply the failure of the succession in the person of Irene. The empire, upon its so called division, held by the Emperors of the East and West as joint tenants, so that upon the extinction of the Western branch in the person of Augustulus, the entirety survived over to the Empire of the East 413

Imperial diadem, bestowed by the virtual representatives of the Christian world 414

Passages of ancient chroniclers, shewing that Charlemagne was considered as the immediate successor of Constantine V. . . . 414

Title of Basileus, not expressly assumed by Charlemagne . . 419

Carlovingian empire *not* created by a union or amalgamation of the different states and populations of which it was composed . 419

Individuality of the several nations, states, races, and communities included within the Frankish empire, severally retaining their own laws and administrations 419

Cities of Roman Gaul. Many of them retain their political existence, as deduced from the Roman period, until the Revolution . 419

Codes of laws of the different nations, to be viewed as charters securing their individuality 420

Feudal system, founded upon the Roman military system of Benefices; Lætic and Limitanean grants united to Teutonic usages and doctrines 420

Feudal system. Personal relationship of Lord and Vassal derived from the Teutonic *Antrustionship* or homage. But the tenure of the Beneficiary land, borrowed from the Roman jurisprudence 421

Feudal system; popular but erroneous theory of its origin propagated by Robertson, Montesquieu, &c. 421

Feudal system could not have arisen amongst the Teutonic nations 422

Germ of the feudal system found in the donations of the Lætic and Limitanean lands, and other military Benefices of the Romans 422

Benefice used as synonymous to *Feud*, as late as the twelfth century (Note) 422

Benefices granted by Clovis in imitation of the lands granted during the Empire to the *Leute* or *Liti* 423

Provinces, how occupied by the Barbarians 424

"Sortes" or allotments of land to the Barbarians, under the title of *Guests* 424

This mode of providing for the military apparently suggested by the Roman law, according to which one third of the house, &c. was allotted to a Legionary, under the denomination of *Hospes* . 424

PAGE **Part I.**

Military hospitation, extract from the Theodosian code (Note) . 425
Roman beneficiary policy, takes a new form under the Barbarians 426
Pride and haughtiness of French feudality, perhaps to be deduced from the usages prevailing in Gaul before the Roman conquest . 427
Heylin's observations on the permanence of character exhibited by the inhabitants of Gaul (Note) 427
Military policy of the Barbarians. Its effects upon beneficiary tenure 428
Military placita, or conventions 428
Precept issued by Theodoric for the general summons of the Goths compared with an ancient English writ of military summons . 429
Antrustionship, relations between Lord and Vassal. Elderman, or Senior, and Vassus, or Junior, contribute to the formation of the Feudal system, when united to the tenure of beneficiary land 431
Engagements of the Antrustion, otherwise called Commendation, Homage, or Vassalage 431
Obedience, aid, counsel and secrecy, implied by the engagement of the Homager or Vassal. Duty of military service resulting from these obligations 432
Benefices. Theory that military service was not imposed as a duty upon the Tenant thereof until the age of Charles Martel. Reasons for doubting this supposition 432
March Counties, or Marquisates, e.g. such as the territory held by William and Engelschalk in Pannonia, now Austria, similar to the *Limitanean* territories held by the Roman Duces and Milites 432
Beneficiary system existing amongst the Greeks of the Lower Empire 433
1152—1190. Frederick Barbarossa studies the Grecian or Byzantine law of Feuds, for the purpose of improving the laws of his own dominions 433
Greek feudality (Note) 433
Military adoption. Knighthood derived from the ancient German custom of investing the youth with arms upon his attaining his full age 434
Military adoption of the King of the Heruli by Theodoric of Verona 434
Theory, that Benefices passed through three gradations or stages, first granted at pleasure—next for life—lastly as an inheritance 435
Difficulties attending the theory, that the hereditary principle was not established until the reign of Charles le Chauve: which difficulties will be removed, if it be recollected that the Benefice was held upon condition of fealty, or homage, and that the right of possession or inheritance was not absolute, but depended upon the performance of such condition 435
Relief, etymology of the term (Note) 436
Homage continued only during the joint lives of Lord and Vassal, and was dissolved on the death of either 436
Therefore, if the Lord died, the Tenant was bound to repair to the new Lord, and to perform homage; and if the Tenant died, the Heir was bound to perform homage to the Lord; and, in either case, the Tenant obtained a new investiture 437

Part I. PAGE

This principle exemplified by the Precepts of Charlemagne and his sons, by the new investitures made on the accession of an Earl of Flanders, and by the renewal of homage on the accession of a King of Neustria, or of an English King 437

Alienation of a Frankish Benefice effected, as appears from the formulary of Marculfus, by surrendering the Benefice to the Lord, to the intent that he might re-grant the same to the alienee . 438

Objections to the opinion that the "Præceptum de Læsiwerpo" was an instrument of feudal conveyance; answers to such objections (Note) 439

Hereditary dignities, Dukes, Counts, &c., reasons for supposing that such dignities were composed of three *elements* of authority: or from a combination of three causes, the hereditary authority of the ancient ruling castes or families, the grants of delegated or official dignities to the reigning individuals of the families, and the conversion of the territory occupied by the people into a Benefice, held by the Senior as his property 441

Capitulary of Kiersi, by which an hereditary right has been erroneously supposed to be created in territorial dignities (Note) . . 441

Hereditary authority, anciently vested in the ruling castes or families, though not absolutely inhereditable. Thus, the Dux or King of the Bavarians was always of the family of the *Agilolfings*, but the individual was appointed by the Frankish King, with the approbation, or upon the nomination, of the Bavarian nation . . 442

The Duke was to reign if duly qualified; the Son was prohibited from claiming the dignity so long as his father was thus qualified; thereby shewing that he could claim it when his Father became incompetent to act 442

Such authority and trust not to be withdrawn from the family: so that the children felt themselves aggrieved, if the honour was bestowed upon a stranger 442

Right of confirming the subordinate chieftains or kings exercised by the paramount Sovereign. He would decide between competitors, &c., as in the cases of the Bavarian Duces, the Slavonian Princes, &c. 443

Mode of reconciling various passages—apparently conflicting—respecting the succession of dignities, some of which seem to imply that the Dukes, &c. were elected by the people, others, that they were nominated by the Sovereign 444

Hereditary chieftains, appointed to the Roman Comitial or Ducal dignity by the Frankish Sovereigns, which delegated authority became at last united to their patriarchal authority . . 444

Official dignities attracted by the hereditary or patrimonial authority 445

Oath of fealty exacted upon the appointment of a dependent sovereign 445

Formula of the appointment of a Frankish Count (Note) . . 445

Feudal or beneficiary authority, founded upon the surrenders made by the hereditary chieftains of the lands of their people, which they (i.e. the chieftains) received back as Benefices . . . 446

PAGE **Part I.**

Tassilo III., Duke of the Bavarians. His history exemplifies the foregoing position, or the manner in which the hereditary chieftains became feudal princes 446

594, 596. Tassilo I., the Agilolfing, appointed, i.e. confirmed, in his ducal authority by Childebert. Odilo, his descendant, in like manner by Charles Martel 447

Odilo marries Hiltrudis, daughter of Charles Martel, against the will of her brothers, Pepin and Carloman 447

Swanhilda, niece of Odilo, the consort of Charles Martel, by whom she has Grifo 447

748. Tassilo III., son of Odilo by Hiltrudis, succeeds to his father's authority; expelled by Grifo; restored by Pepin 447

754, 755, 757. Tassilo attends the Champ de Mars, performs military service; commends himself to Pepin, and performs homage; takes the oath of fealty to Pepin and his sons, Charles and Carloman 447

763, 780. Tassilo violates his oath, rebels. Papal mediation. Charlemagne leads his army against Tassilo 448

Tassilo surrenders his Benefice by the delivery of the staff, being the tradition "per fustem et baculum" as still used in Scotland 448

788. Tassilo, pursuant to the command of Charlemagne, attends, like the other Vassals of the crown, in the general placitum at Ingelheim: accused of various acts of treason; condemned to death by his Peers; pardoned by Charlemagne; surrenders his Duchy by the ceremony of "Guerpition," together with all the right which he, his sons, or his daughters, had or might have in the same 448

The authority of the Dukes and Counts of the Carlovingian Empire, to be therefore considered as composed of the three elements before mentioned, an hereditary or patriarchal authority (i.e. that of the chieftain of a clan), an official authority (i.e. that of a governor or lord-lieutenant), and a feudal authority 449

Rights of the hereditary chieftains, not so indefeasible or absolute as to render their accession to territorial dignities a mere matter of course 449

The rank of the Dukes and Counts of the Carlovingian Empire elucidated by comparing them to an Earl of Argyle, whose consequence and dignity arose from his being the chief of a clan, holding baronies by feudal tenure, created an Earl by patent, and also exercising the office of Lord Justice General by virtue of a royal grant 449

Effects of the feudal system in increasing the political power of the Sovereign-Superior 450

Corresponding gain of power by the Vassal-Sovereign 451

Extension of the principles of Antrustionship and Beneficiary law 452

At the inauguration of the Emperor, the several nations composing his Empire accept him as their Protector and Defender. Compare with the submission of the East Anglians, &c. to Egbert . 452

Inauguration of Charles le Chauve (Note) 452

Part I. PAGE

The *Champ de Mars*, afterwards the *Champ de Mai*, originally a military convention, similar to the armed council of the Gauls described by Cæsar 454

Gifts presented to the Kings in the Champ de Mars . . . 456

Such gifts equivalent to a permanent taxation of the Vassi . . 456

Hincmar's description of these assemblies (Note) 456

Constituency of the legislative assemblies of the Franks . . 458

Opinions as to the period when the Clergy were first introduced into the assembly 458

Clergy, not united into one body with the temporal legislature, but constituting a distinct house or branch 459

General Placita of the Carlovingian age, formed by the concurrent session of various courts, tribunals, and legislative bodies, brought together generally (but not invariably) at the same time 459

The same kind of assembly might be described in different ways, according to the nature of the business which preponderated . 460

Counsel, how given by the Proceres 461

The people sometimes allowed to share in the discussion . . 461

Legislation upon petition, a course imitated from the administration of the Lower Empire 461

Petitions presented in like manner by the Clergy, the answer of the Sovereign, in this case, becoming the "Capitulum," or ordinance 461

General "Placita" of the Carlovingian Sovereigns not to be considered as the legislature of the Empire: since the capitularies did not acquire the force of *law*, until verified by the several nations in their own peculiar legislative assemblies 461

The Mallum, or Legislature of the dependent nations . . . 462

The Mallum under the Carlovingians not to be held unless by the mandate of the Missus 462

Vassi summoned to attend the Mallum 462

Mallum, etymology of the term (Note) 462

Echevins attending the Mallum 463

Affairs of the Country or Nation administered in the Mallum . 463

Distinction between the "Capitulum" and the "Lex." The Capitulum or *Ordinance* enacted by the Emperor in the general Placitum, Parliament, or Diet of the Empire, *not* considered as *law* until ratified by the acceptance of each nation in which it was to have such validity 464

Opinions of Mably respecting the provincial assemblies (Note) . 464

Various modes by which the subject-nations concurred in legislation. Representatives from each "Gau" appearing before the Sovereign, as in the case of the Saxons. Petitions presented to the Sovereign in the name of the nation, containing the resolutions adopted in the popular assemblies, as in the case of the Frisians. These proceedings facilitated by the reminiscences or vestiges of the ancient duodenary courts and federative systems 465

PAGE **Part I.**

Occasional conventions of the different nations included in the empire, but which conventions had rather the character of political congresses than of legislative assemblies 466

Solution of the difficulties attending the constitutional history of France. Supposed dismemberment of the kingdom at the period considered as the era of the establishment of the feudal system 467

Erroneous opinions of the French constitutional writers, Guizot, Mably, Sismondi, &c. who all assume that the so-called provincial or local jurisdictions and smaller societies, resulted from the division and breaking up of larger societies, whilst, in fact, such provincial institutions, &c. are only the vestiges of ancient independent organizations re-appearing when the *superinduced authority*, by which they had been kept down, became less efficient . . 467

Style of the King of the French, when altered (Note) . . 467

States General of France never possessing legislative authority . 469

Erroneous reasoning of those who suppose that the territories composing France never possessed any constitution except such as was founded upon feudality 470

States composing the country called France, incorrectly denominated Provinces 472

Legislatures formed out of the Mallum or Placitum of the Carlovingian age 472

The preceding position exemplified by the Estates of the Sénéchaussée of Carcassonne 473

These assemblies summoned by writ, and containing a full representation of the Tiers Etat, who are usually considered as having been introduced into the States General of France by Philip le Bel 473

Consuls attending on behalf of the Cities, the Roman Curiales under another name 473

States of the *Langue d'oc* formed by the union of the States of the Sénéchaussées, &c. 473

Estates of the County of Toulouse 473

1212. Parliament of Pamiers convened by Simon de Montfort . 473

1229. Council or Parliament of Toulouse, composed of Prelates, Counts, Barons and Magistracy 474

Attempt of the Neustrian peasantry to organize a federative or representative government 474

States of the Middle Ages formed by nations implanted amongst nations: two or more *sets* of municipal institutions might exist in the same territory 475

The Warden of Galway (Note) 475

General uniformity of the legislative bodies 476

Reappearance of the Teutonic Courts, as in the case of the confirmation of the ordinance of Chartres by the twelve Burgesses of Paris, &c. representing the ancient Scabini 476

Constitutional history of France to be sought in the so-called Provincial States, and not in the States General . . . 477

CHAPTER THE EIGHTEENTH.

Part I. PAGE

Name of King, probably borrowed from the Celts . . . 479
Saxon Leaders originally called "Ealdormen," or Seniors . . 479
Government of the old Saxons (Note) 480
Limited Monarchies of the Middle Ages, to be considered as arising out of the Roman Empire, or Fourth Monarchy . . . 482
Proofs of the position, derived by contrasting the policy of those States which arose on Roman ground, with the policy of the Scandinavian kingdoms 482
Scandinavian States: privileges of the people, the popular courts inadequate to secure the liberties of the country . . 482
Tyranny of the Norwegian monarchs; Iceland settled by the Norwegians, who take refuge in that island to escape from the tyranny of Harold 482
Hereditary succession amongst the Anglo-Saxons; that is to say, the supreme authority was vested in the sons of Woden, from whom the Ealdorman, or King, was to be elected or selected . . 483
Royal authority, in the earlier ages of the Anglo-Saxon kingdoms, usually transmitted by lineal descent, son succeeding to father: deviations observed in subsequent ages, the brother of the late King being often preferred to the son 483
Anglo-Saxon monarchy, not elective in the ordinary sense of the term; the royal authority being wholly vested in the Royal families 484
Cases in which judicial recognitions might be required. The Heir was to be born in lawful matrimony, and *after* his parents had been called to the throne: and the judgment of the Witan would be required to shew that he was legitimate 485
Anglo-Saxon Kings exercised the prerogative of bequeathing the Crown, or of nominating a successor by testamentary disposition 486
Proceedings of the Witan in recognizing Canute, and recalling Edward, not to be considered as acts of election 487
Theory of royal succession amongst the Anglo-Saxons, that the Sovereign acquired an inchoate right by birth, but was to receive investiture, or be confirmed by the national assent 488
Form of the ancient election preserved in the *recognition* which takes place at a modern coronation 488
Rise and progress of Imperial sovereignty amongst the Anglo-Saxons. Defence of the application of the term 488
The Bretwaldas, their authority deduced from the Roman Imperial authority, particularly as exercised by the Provincial Emperors, erroneously denominated Tyrants 489
Aurelius Ambrosius, his Imperial authority perhaps transmitted to Ella, King of the South Saxons, the first Bretwalda of Saxon race 489
Nature and extent of the authority of the Bretwalda or Emperor of Britain 489
Imperial or Roman symbols assumed by the Bretwaldas . . 490

PAGE **Part I.**

Northumbrian Bretwaldas, Edwin, Oswald, and Oswio. Decline of the power of the Angles of Northumbria, and rise of Wessex . 490
Title of Bretwalda not assumed by Offa and Ethelbald, although these Sovereigns possessed an equivalent authority . . . 491
Archbishopric of Lichfield or Mercia founded by Offa . . . 491
Decay of the Mercian power 491
800, 828. Imperial supremacy of Egbert. He returns from exile. The Celtic, Cymric and Teutonic nations of Britain submit to him 492
Northumbria. The throne frequently usurped by intruders, not of the right royal line 492
Danish invasions, to be considered only as the continuation of the Anglo-Saxon expeditions 493
Scandinavian Sagas, their authority 493
The Dynasties of East Anglia, Mercia, Northumbria, &c. extirpated or deprived of Royal power by the Danish invasions. The Kings of Wessex thereby enabled to establish an undisputed authority over the whole of Anglo-Saxon Britain 493
The Danelage 494
Empire of Britain attains its most splendid and flourishing state under Edgar 494
Smaller distinctions and divisions merged in the Empire of the Anglo-Saxons, Northumbrians, Pagans (Danes), and Britons, or the superiority of the Sceptres of the Scots, the Cumbrians, and the *Wealh* 494
Praises bestowed upon Edgar (Note) 494
The dominion of the "Basileus" over the Britons and British tribes, how exercised 495
West Wales, i.e., Cornwall and Devon 495
Cumbria or Strath Clyde, and Cambria or Wales 495
Wessex considered, in ordinary language, as including Kent, Sussex, and Surrey, though the latter, or the "Orientalis pars Saxoniæ," were often considered as a distinct dominion, held as an apanage by the Atheling 495
Mercia so far united to Wessex as to be considered the proper Anglo-Saxon kingdom 496
Government by the Ealdorman Ethelred as a kingdom in subordination to Wessex, the same having been granted to him by Alfred. Held after Ethelred's death by Ethelfleda, the Lady of Mercia . 496
Dukedoms or Earldoms of Mercia governed by Ealdormen under the supremacy of Wessex 496
The "Danelage," or portion of England settled by the Danes. Boundaries thereof first defined by the treaty between Alfred and Guthrum 497
Ancient description of Britain (Note) 497
Danish Kings of Northumbria 498
Kingdoms of Northumbria converted into Earldoms 498
Northumbria, a separate state, strives to throw off the authority of Wessex 498

Part I. PAGE

Northumbrian Earldoms. Bernicia, to which the name of Northumberland was afterwards more peculiarly appropriated, vested in the family of Waltheof 498
Lothian granted to the Kings of the Scots 498
Territory between the Tyne and Tees granted to St. Cuthbert. Palatinate rights of the Bishop of Durham to be deduced from this donation 499
Ealdormen of East Anglia after the termination of the authority of the Danish Kings 499
Ealdormen of Essex 499
Tenour of the compact between Alfred and Guthrum. . . . 499
Division of St. Cuthbert's territory amongst the Danes (Note) . 499
Jurisprudence of the "Danelage" 500

CHAPTER THE NINETEENTH.

Question as to the existence of feudal tenures amongst the Anglo-Saxons 501
Folkland nearly corresponding to the Odal of the Scandinavians . 502
Land held by Land-boc or Charter 502
Military benefices granted by the Anglo-Saxons from the earliest period of their settlement in Britain 502
Thanes, or Ministers, land granted to them upon condition of fealty and military service 502
Thanes also known by the name of Knights 503
Chivalry formed out of the ancient Teutonic custom of conferring arms upon the youth when he attained his majority or was adopted by a Senior, &c. 503
Hyldath, or oath of fealty (Note) 503
Hereward, his history (Note) 503
Summary of the distinguishing characteristics of the Beneficiary lands, Thane lands, and Læn lands amongst the Anglo-Saxons . 504
Hereditary succession in lands held by a beneficiary tenure, not entirely certain, inasmuch as the land was to be held in connexion with a duty or trust 504
Relief due from the heirs of the Thane, as fixed by the laws of Canute 505
Course by which the relief, though fixed by the law, would be greatly increased by usage 505
Difficulty of enforcing any right which was to be obtained by suit or application to the Sovereign in person 506
Extinction of the discretionary power of the Lord 506
Hen. I. Grant to the heir of William Malduit of the barony held by his father (Note) 507
Ric. I. Grant to Richard, Earl of Clare, of his share of the inheritance of Earl Giffard (Note) 507
Establishment of regular Boards or Courts for the transaction of feudal business: effects of these institutions 508
Feudality greatly extended by the doctrines and fictions of the practising lawyers 508

PAGE Part I.

But, notwithstanding the extension of feudality, the customs of the inferior *stratum* of tenantry continued in great measure unaltered 509
Chieftains and Leaders of the nations subject to the Bretwalda concur in the compact 509
Such submission a political act, and not regulated by any definite principle of law 510
Gradations of Anglo-Saxon supremacy. Dependence of the Britons, Scots and Picts relating more to the person than to the land—a nation subject to a nation, but without any express transfer of the sovereignty of the territory 510
Feudality introduced into the Anglo-Saxon government under Egbert, probably by imitation from the Carlovingian realm . . 511
East Angles accept Egbert as their Lord, Protector and Defender 511
Wiglaf surrenders Mercia, and receives his kingdom to be held of the Conqueror 511
Alfred pursues the same system. Mercia granted by him to Ethelred as Ealdorman thereof 511
Earldoms, &c., of the Anglo-Saxon Empire established at different periods, and under varying circumstances 511
Feudal relations subsisting between the Basileus and the Under-kings, though the services may have been uncertain, and liable to variation at each renewal of the compact 512
The foregoing position exemplified by the transactions between the Confessor and the Welsh princes 512
1056. Oath of fealty taken by Griffith, the "Under-King" of the Welsh 513
1063, 1064. Wales granted by Edward the Confessor to Blethyn and Rhywallon, who take the oath of fealty, &c. 513
Foundation of the claim of Edw. I., that Wales was subject to the English crown by Feudal Law 514
Ealdormen of Mercia and East Anglia, Reguli of the Britons, and Kings of the Scots, all Peers in the Witenagemot 515
Ealdormen and Earls probably descended from cadets and younger branches of the ancient royal families 515
Dynasties, hereditary 516
Irregularities of descent not incompatible with the preceding position 516
Objections to the foregoing theory; answers thereto 517
The deprivation of the elder Waltheof, on the ground of his being incompetent to military service, not a sufficient ground for denying the right of inheritance 517
History of the deprivation of the elder Waltheof, and the promotion of his son Uchtred (Note) 517
Difficulties arising from the ambiguous application of the term Ealdorman 519
Anglo-Norman Earldoms (Note) 519
Hen. II. Grant of the Earldom of Norfolk to Hugh Bigod (Note) . 519
Eadric Streona appointed by Ethelred to be Dux, Præfectus, or Ealdorman, over the whole kingdom of Mercia 520
Ric. I. Grant of the Earldom of Norfolk to Roger Bigod (Note) 520

Part I. PAGE

Canute on his accession divides his dominions into four governments. Wessex he retains in his own hands, whilst he appoints Earls of Mercia, East Anglia and Northumbria, but these functionaries are to be considered as Viceroys, and not as hereditary Princes 521

Earldoms of Godwin and his family 521

CHAPTER THE TWENTIETH.

The question of Scottish subjection, its importance as a portion of the general history of the Anglo-Saxon constitution . . 522

Observations on the temper with which the question has been discussed in Scotland 522

Scottish Parliament orders Atwood's "Superiority, &c., of the Crown of England asserted," to be burnt at the market-cross. Thanks and a reward voted to his opponent, Anderson . . . 523

Scottish jealousy excusable 523

Disputes as to the precedency of the Scottish bearings in the royal arms (Note) 523

Point of view in which the question ought to be now viewed . 524

Homages rendered by the Scottish Kings; inferences to be deduced from their uniform course and tenour 524

Recapitulation of the several acts of homage, and remarks on the connexion thereof 525

Malcolm Canmore summoned to appear at the Court of Rufus, does not deny his subjection, but claims the right of being judged by border law 525

Malcolm acknowledges that the Kings of the Scots were accustomed to *do right* to the Kings of the English, or of England . . 526

Duncan, Edgar, Alexander acquire the Scottish Crown by the assistance or grant of the Anglo-Saxon or Anglo-Norman Sovereigns 526

Difficulty of accounting for the unanimous submission of the so-called *Scots* to Edward I., except upon the supposition that they felt the substantial justice of his claim 527

Answers to the objections against the dependence of the Scottish Monarchs, as urged by Anderson, Dalrymple, Craig, Chalmers, &c. 527

Objection I. That the Charters are forgeries 527

Objection II. That the Chroniclers are unworthy of credit . 528

Objection III. That the supposed homages were merely voluntary leagues, &c. 528

Objection IV. That the examples of the homages performed, and of the attendance given, by the Scottish Kings at the Court of the Anglo-Saxon Basileus, are few in number 529

Objection V. That the homages were enforced by hostility, and that the submission of William the Lion to Henry II. was extorted by duresse, and afterwards released by Richard I. . . . 529

Compulsion by hostility and military execution, the only mode of obtaining justice to which a feudal Sovereign, circumstanced like Henry II., could resort 529

PAGE **Part I.**

A Vassal had originally no other means of obtaining justice against his Lord 529

These proceedings resulting from the general principle of allowing parties to take the law into their own hands 529

Rebellion of the Scots against Canute justified by the deficiency of his title as a usurper, which would enable the Scots to maintain that he was not entitled to the homage due to the line of Cerdic 529

Probability that Malcolm Canmore refused to submit to the Conqueror, in consequence of the claims which his wife, Margaret, possessed to the Anglo-Saxon Crown 530

Proofs of the Saxon feelings which existed in the Court of Malcolm. Anglo-Saxon names assumed by the children of Malcolm. Gaelic appellatives disused by the Scoto-Saxon Kings 530

Scoto-Saxon Kings virtually disown their Gaelic descent. The Gael governed by the Lowlanders or *Sassenachs*, as a strange people, almost as enemies 531

Scots attempt to secure themselves against the English followers and retainers of their Kings (Note) 531

Edgar, the Vassal of William Rufus, and restored to the Crown of the Scots by the aid of the Superior, unable to assert his rights as representative of the line of Cerdic: but his assumption of the title of "Basileus" indicates his claim 532

1137, 1138. Attempts made by the English to call in the Scoto-Saxon Kings against the Normans 532

David assumes the Dragon of Wessex as his standard 533

The Scottish Kings considered by English Chroniclers as the legitimate heirs of the Anglo-Saxon rights 533

David's Invasion of England (Note) 533

Passages shewing the opinions entertained concerning the rights of the Scoto-Saxon Kings (Note) 534

Stipulations imposed upon William the Lion, by the Treaty of Falaise, not unfair or unjust, nor inconsistent with the previous claims of the Anglo-Saxon or English Crown 535

Prelates, Earls, Barons, &c., of Scotland, the subjects of William, perform homage to Henry II., his Superior 535

Title of "Rex Scotiæ" (Note) 535

Rights of the Scottish Kings preferable to those which Henry II. could deduce through Maud, the daughter of Margaret, inasmuch as the Scottish Kings would take precedence as male heirs . 536

Anglo-Saxon genealogy of Hen. II. (Note) 536

1189. Ric. I., or Cœur de Lion, releases to William the Lion all conventions and agreements arising out of the Treaty of Falaise, a transaction which has been erroneously represented as a renunciation of his superiority 537

Tenour of the Charter of Release purchased by William by the fine of 10,000 marks 538

Effect of Richard's so-called restoration of *Scottish independence*. All the ancient rights of the English Crown are reserved, so that the question of subjection remained as open as before . . 538

Part I. PAGE

Extracts from the Charter of Release granted by Richard (Note) . 539

Legends and fables adduced by Edward I. (and also by the English Chroniclers) to support the Anglo-Saxon claims. The Scots rebut fables by fables 540

Charters forged by the English as evidences of the Scottish homages; but which Charters, by displaying the ignorance of the individuals who attempted to counterfeit ancient Charters, afford, by comparison, the best proof of the authenticity of such documents as are genuine 541

Forgeries of Harding the Chronicler. Spurious Charters of Malcolm and of Edgar (Note) 541

Homages and acts of submission of the Scots, to be construed according to the contemporary practice, and not according to doctrines subsequently introduced 544

Arguments by which the Scots attempt to disprove the Anglo-Saxon superiority, capable of being retorted so as to destroy the legal superiority of the Scottish Crown over the Islands and Highlands, &c. 544

Sassenach feeling displayed by the modern Scotch Historians, who treat all attempts made by the Gael to regain their ancient liberties as acts of rebellion, though such attempts differed little (if at all) from the resistance opposed by the Scots to the English 545

On the policy pursued by the Scottish Sovereigns towards their Celtic subjects 545

"Parliament of Inverness." Observations on Mr. Tytler's account of the treatment of the Highland Chieftains by James I. (Note) . 546

Recapitulation of the facts relating to the relative rights and pretensions of the Scottish and English Sovereigns 547

CHAPTER THE TWENTY-FIRST.

Complicated principles of government amongst the Anglo-Saxons. Imperial authority of the line of Wessex, after the extinction of the royal title in the dependent kingdoms, though such kingdoms still continued independent of each other 550

Titles assumed by the Anglo-Saxon monarchs 551

The recognition of the authority of the Sovereign on his accession; obtained from each of the leading States, separately and apart from the others. 551

Component parts of the kingdom 551

Towns and cities unknown to the primitive Teutons 552

No materials for the history of the constitution of the Anglo-Saxon Burghs anterior to Domesday 552

Danish Burghs, i.e. York, Lincoln, Stamford, Nottingham, and Derby, colonized by the invaders 553

Larger Burghs to be considered as territorial corporations. Rights of the Burgesses arising from their Burgage tenements . . 553

PAGE Part I.

Lahmen or Lawmen of Chester, Lincoln, &c. derive their authority from the "mansi," &c. which they held. Territorial Aldermanries of Canterbury 553
Qualified rights of sovereignty possessed by the King in the principal Cities or Burghs 554
Citizens of Exeter declare to the Conqueror that they are willing to render the accustomed tribute, &c., but that they will not swear fealty to him, nor allow him to enter within the walls of the city 554
A City thus circumstanced, to be considered like Marseilles, as a species of republic *enclaved* in the territory of the King . . . 554
Objections to the foregoing theory; and answers thereto . . 555
General Statutes, carried into effect by and through the "By-laws" enacted in the "Frith-gild" of London 556
Anglo-Saxon Empire, not a united kingdom, but an aggregate of States and Communities, unincorporated, though tending to incorporation 556
Witenagemot, originally not differing from the Shiremoot of subsequent times 556
Representation of the Townships by the Four Men and the Reeve 557
Various examples of Assemblies composed by deputations from Townships, Hundreds, &c. (Note) 557
Elective Alderman of the Hundred chosen by the Suitors, and appearing as the representative of the Hundred in the Shiremoot . 558
Dependent kingdoms retain their separate legislatures, notwithstanding the unions of the Crowns 558
Ecclesiastical Synods amongst the principal causes producing such tendency to union 559
Imperial Witenagemot, not a legislative assembly, possessing a coercive authority over the whole realm. Similar in this and in other respects to the general Placitum of the Franks . . 560
785. Proceedings of the Council of Cealchythe 560
Canons enacted in the Council held for the Province of York and the Kingdom of Northumbria, brought into the Council held for the Province of Canterbury and Empire of Offa 560
Analogous course prevailing in those councils or legislative assemblies which were purely temporal 561
Laws of Athelstane transmitted to the Kentish Witenagemot, and accepted by them 561
Edgar declares that his laws shall be adopted by English, Danes and Britons, and they are transmitted by writ to Earl Oslac (Northumbria) and Ealdorman Aylwin (East Anglia), yet they were not adopted in Mercia until the reign of Canute in 1018 . . 561
Laws of Edmund the Elder not accepted in Mercia until 1022 . 561
Laws of Canute renewed in Northumbria, 1066 . . . 561
Legislation only a small portion of the business of the Witenagemot 562
Royal grants promulgated in the Witenagemot. Analogous usages under the Anglo-Norman Sovereigns 562
Witenagemot includes a Court of feudal Peers 562
Criminal jurisdiction of the Witenagemot 563

Part I. PAGE

Increase of the influence of the Witenagemot from the reign of Edgar 563

Assemblies of the Witenagemot convened by the Basileus, approaching to the character of political congresses 563

In the Witenagemot, considered as a political congress, the members who adopted any particular measure could not bind those who did not concur 563

Opinion prevailing as late as the reign of Edward II. that Parliamentary grants bound those parties only who actually concurred therein (Note) 564

The Imperial Witenagemot, or the Assembly convened by the Basileus, probably included a Shire Court for the district in which it was held, and a Land-gemot for the Kingdom 565

Earls, Ealdormen and Feudal Tenants of the Crown attend in the Witenagemot 565

Thanes of the Danish Burghs attend in the Witenagemot . . 566

Probability that the great Anglo-Saxon Burghs may have formed conventions amongst themselves, analogous to the convention of the Scottish Burghs, the Hanse Towns, the League of the Lombard cities, &c. 566

Exeter confederates with other Burghs against the Conqueror . 566

Reasons for supposing that popular election rarely (if ever) existed 567

Twelve Lawmen or governing body of Lincoln, reasons for supposing that they would attend the Witenagemot by a deputation whom they would nominate from amongst themselves, without any formal election 567

..or, in special cases, they might appoint a Procurator, not being one of their body 567

Influence of the Duodenary Courts, or of the bodies which replaced them, in creating the legislative and municipal institutions in England 568

Theory of the Anglo-Saxon Monarchy 568

Imperial title of "Basileus" assumed by the Sovereigns of Wessex. Inferences drawn from the assumption of this title . . 568

705, 709. Aldhelm, Bishop of Sherborne. His proficiency in the Civil Law 569

Edgar's rigid administration of the law the means of increasing his personal influence 569

Judicial Eyres or Circuits of the Sovereign as the supreme Magistrate and source of remedial authority 570

Resort to be made to the King in person, when right could not be obtained in the inferior jurisdictions: being the remedial jurisdiction afterwards exercised by the King in Parliament, and from whence Courts of Equity were ultimately derived . . 570

Supreme remedial authority vested in the King's person, and not shared by the Witan 570

Judicial gifts, money paid to Edward the Confessor and Queen Editha, by the suitor 571

PAGE **Part I.**

"Land-boc," containing the compromise of the suit (equivalent to the chirograph or final concord) deposited in the Treasury under the care of Hugoline, the Chamberlain 571

Effects resulting from the employment of the Great Seal. Influence obtained by the Clerks of the Chapel or Chancery . . 571

Features of Anglo-Norman administration discernible before the Conquest. Fines upon original writs. Aurum Reginæ. Custody of Records in the Treasury of the Exchequer 572

Great Council of William the Conqueror in the earlier years of his reign, not differing materially from the Witenagemot of the Saxon Kings 573

1123. Witenagemot held at Gloucester by Henry I. Bishops, Abbots and Thanes summoned by the King's writ 573

Henry I. Anglo-Saxon *nicknames* given to him and his consort Maud by the Normans 574

Anglo-Saxon institutions and laws, retained in England after the Conquest to a much greater extent than in the institutions and laws of the parallel periods on the Continent, where the earlier jurisprudence and policy rapidly passed away, although no foreign conquest had taken place 574

No theory of any compact between the Sovereign and his people existing in the early periods of Anglo-Saxon history . . . 575

The idea of such a compact, the result of the introduction of the ceremony of royal consecration. Theory of the moral responsibility of the Sovereign first taught by the clergy 575

A species of sacerdotal order conferred upon the King by the rites of coronation. Intent of the ceremony introduced by the church 575

Anglo-Saxon coronation oath and royal consecration . . . 576

1014. Ethelred restored, upon his entering into a new compact with the nation; promises to amend his course of government, to grant a general amnesty, &c. 576

Such compact the result of a compromise between the doctrines of hereditary right and royal responsibility 577

..and the foundation of the modern Constitution . . . 577

NOTE.

It was intended that a version of the Anglo-Saxon Laws should have been included in the Proofs and Illustrations, and the references in the first half of the volume were made according to such version. But as the public will shortly be enabled to peruse these specimens of ancient legislation in the very excellent translation of Mr. Price, I have omitted them, with the exception of the portion of the Laws of Ethelbert included in the Commentary upon the Laws of the Conqueror. The following table will enable the reader to adjust the references to the texts in Wilkins, &c.:—

Athelstane I. .	The "Gerædnes"	p. 54 to 61.
Athelstane II.	The Laws made at Exeter	62 to 63.
Athelstane III.	The Laws relating to the Hundred . . .	(Brompton, p. 847.)
Athelstane IV.	The Laws made at "Thundredesfeld" .	(Brompton, p. 848.)
Athelstane V. .	The Address of the Witan of Kent . . .	(*Proofs*, p. 170.)
Edmund I. . .	The Laws made at London	p. 72 to 73.
Edmund II. .	The additional Laws	73 to 75.
Edmund III. .	The Laws made at "Culentune" . . .	(Brompton, p. 859.)
Edgar I. . .	The Ecclesiastical Chapters	p. 76 to 77.
Edgar II. . .	The "Weorldcund Gerædnes," or Secular Laws,	p. 77 to 79.
Edgar III. . .	The supplementary Laws	p. 79 to 82.
	N.B.—In Wilkins, the paragraphs are not numbered.	
Ethelred I. . .	The Laws made at Woodstock	p. 102 to 104.
Ethelred II. .	The Laws made at "Waneting"	117 to 118.
	N.B.—In Wilkins, the paragraphs are not numbered.	
Canute I. . .	The Ecclesiastical Laws	p. 126 to 133.
Canute II. . .	The Secular Laws	133 to 147.

THE

RISE AND PROGRESS

OF THE

ENGLISH COMMONWEALTH.

CHAPTER I.

Legal Constitution of England—Its relation to the History and Character of the Political Constitution—Anglo-Saxon Ranks and Orders of Society—Their Nature, Origin, and Privileges.

ENGLAND is distinguished from the surrounding nations, not only by the conformation of the Legislature, but also by the institutions either directly or indirectly connected with the dispensation of justice, and which are invested with characteristics as singular and important as the attributes belonging to the Parliament of the realm; equally singular, since, in the present age, we cannot find a parallel to them, unless the resemblance be sought in those countries where they have been planted by Englishmen, or professedly borrowed from England; equally important, because they are the sources of the peculiarities, of the merits, and, perhaps, of the defects belonging to the political constitution.

Trial by jury, courts of equity, proceeding in a course entirely different from that adopted in courts of law, the franchises of municipal corporations, the jurisdiction possessed by the justices of the peace, the compulsory provision for the maintenance of the poor, are all essential elements of English policy, and which cannot be excluded from our consideration, if we wish to obtain a full and impartial view of the organization of our government.

Peculiarities of the legal Constitution of England.

In attempting to describe the rise and progress of the English Commonwealth, I shall, therefore, in connexion with the political history of the Legislature, endeavour to deduce the origin of our ancient tribunals, and to delineate the outlines of English jurisprudence.

Part I. Ch. I.

If the inquiries which I have undertaken had been more familiar to the distinguished writers who have treated upon English history, I should not have ventured to attempt a task presenting great difficulties. But my predecessors have left a chasm in constitutional literature, which the present work, however imperfect, is intended to supply. Political events generally occupy the first station in the pages of the historian; political institutions, the second; judicial policy and laws, the third and last. The archives of an obsolete jurisprudence offer but few inducements to the diligence of the student, and fewer attractions to the imagination of the reader. Unadorned by the pride and pomp of war, ungraced by the brilliancy of royalty, deprived of the fascination and dramatic interest belonging to enterprise and adventure, the repulsive records of the law have been generally treated with neglect, or rejected as cumbersome accessories to history.

Yet it is unnecessary to insist upon the utility of the elucidations which the pages of the chronicler derive from the mouldering roll and the mildewed charter; nor need I repeat the maxim so often repeated, that the value of any form of government depends upon the protection which, through the law, it affords to the individual. All this will be readily conceded; but with respect to this country, it must be added, that the ancient modes of administering the laws have produced the political Constitution.

Political Constitution of England derived from the legal Constitution.

That political Constitution, so much extolled and so highly prized, is comparatively an invention of recent date, a creation of yesterday. Parliament, in its present form, and with the functions now severally vested in King, Lords, and Commons, is entirely founded upon the legal Constitution by which it was preceded; and the authorities exercised by the aristocratical and popular branches of the legislature, have arisen from the ancient distribution of the powers of remedial and coercive justice.

Indeed the history of the law affords the most satisfactory clue to the political history of England. When we peruse the annals of the Teutonic nations—the epithet, Teutonic, being used in its widest sense—the first impression which we receive results from the identity of the ancient laws and modes of government which prevailed amongst them. Like their various languages, which are in truth but dialects of one mother-tongue, so their laws are but modifications of one primeval code. In all their wanderings from their parent home, the Teutons bore with them that law which was their birthright and their privilege; and

even now we can mark the era when the same principles and doctrines were recognized at Upsala[1] and at Toledo, in Lombardy and in England. But descending the stream of time, the tokens of relationship diminish, and at length disappear. Amongst the cognate races on the continent of Europe, political freedom was effaced by the improvement of society; England alone has witnessed the concurrent development of liberty and of civilization. From whatever causes it may have originated, a beneficial impulse was given by the Anglo-Saxon and Anglo-Norman governments to the courts of justice which, though emanating from the Crown, were interposed between the Sovereign and his subjects, in such a manner as to tend towards a limited Monarchy. And if this tendency had not continued and increased, the share of authority possessed by the people or their representatives would have been as feebly established here, as in other countries, which, starting from the same point, proceeded in a less fortunate career. Deprived of the security afforded by institutions which became the strongholds of liberty, and the stations of defence from which the patriot could not be dislodged, the Parliament of England, like the Cortes of Spain, or the States General of France, would long since have declined into inefficiency and extinction.

Nor are the lessons to be obtained by a study of our ancient jurisprudence destitute of a practical application. It is true that they can rarely be pleaded in the court, or quoted by the Advocate, but they may furnish arguments equally against the groundless fear of innovation, and against the wildness of theory. There are some amongst us who consider the present system as the result of the "wisdom of ages," admitting of no amendment, requiring no amelioration, alloyed by no imperfection, weakened by no decay. Such are the sentiments of those reasoners, who have adopted the belief that it is the imperative duty of good and loyal subjects to become the uncompromising defenders of all existing institutions, in every part and detail. On the contrary, the opponents of these institutions represent the English law as the inheritance of a barbarous people, in which a rude and unreasoning spirit of freedom struggles, and most ineffectually, against the prejudices derived from ancient times; whilst any approach to real "liberality" receives an insuperable check from the political corruptions and vices of the present day. When we weigh the relative worth of the arguments to be adduced by the two conflicting parties, it must be admitted that the first may be assailed by arguments which they cannot readily refute, and

Laws of England, how considered by different parties and partizans.

Part I. Ch. I.

embarrassed by facts which they cannot satisfactorily deny. Contemplated abstractedly, and severed from the frame of which they form a part, there are very many of our institutions which appear weak, incomplete, and encumbered with useless perplexity; more, which, when construed according to the strict letter of the law, are liable to perversion and abuse. Commendations are indiscriminately lavished upon our system of jurisprudence which it does not deserve. It abounds with blemishes which no impartial observer can fail to discern. Statutes, some older than the gloomy Gothic hall[1] in which they are expounded, others hastily enacted, calculated to meet only the exigency which gave them birth, and yet stubbornly retained, though productive of mischief or absurdity: precedents created without any attention to broad and general principles; and followed rigidly and religiously for centuries after the original cause of the decision is forgotten:—these are the chief materials of our jurisprudence; and in which we search in vain for order, contrivance and consistency.

Hence, the "wisdom of our ancestors" has become a by-word and a reproach amongst those, who, either covertly or openly, demand a complete renovation of our policy; or, to use the new and expressive phrase of these our times, a Radical Reform. Yet, how irremediable are the mischiefs which may be inflicted by too hasty a removal of evil! Nations are but aggregates of individuals, and no alteration can conduce to the comfort of the people at large, if unacceptable to the greater number of those classes which are the natural depositaries of national strength and energy. Education and example, habit and interest, the lessons of early youth, the avocations of riper age, all contribute to connect existing institutions with the most praiseworthy feelings, the most excusable prepossessions, and the most unyielding prejudices of our nature. Even prejudices result from misapplied experience, and must be respected, if we really wish to produce a grateful and lasting benefit: for any "reform" which, as far as human obligations are concerned, is not effected by means of compromise, will only lead to oppression and tyranny. Amongst the causes which have contributed to render the English law a source of partial good, one of the most efficient has been the caution of our legislators. Generally speaking, they have been actuated by a sincere, though perhaps not an enlightened, love of justice; and occasionally the very narrowness of their views has stood in the stead of better motives.

Though the modern policy of England may, at first sight, appear to differ most widely from the ancient laws, still the alterations have been chiefly effected by custom and transmission. Legislation has advanced in one continued path, treading in short and measured steps, and usage has effected more than legislation. By far the greatest portions of the written or statute laws of England, consist of the declaration, the re-assertion, the repetition, or the re-enactment of some older law or laws, either customary or written, with additions or modifications. The new building has been raised on the old groundwork: the institutions of one age have always been modelled and formed from those of the preceding, and their lineal descent has never been interrupted or disturbed.

By these means, the Country, notwithstanding its various revolutions, has been exempted from any violent shocks or changes, and from their consequent afflictions. The Legislature, unless when yielding to the dire temptation of political animosity, has not frequently been guilty of positive wrong. Chequered with many dark and dreary scenes of sin and sorrow, the political history of England is, on the whole, less depressing than that of any other state or dominion which has hitherto existed. In no other community can we discern, at the end of each successive cycle, so incontrovertible an advance in the science of political government. Intervals occur, fraught with turbulence and unhappiness; grievances may have been too loudly urged; grace too long withheld: but no liberty once acquired by the people has ever been lost; and each season of misfortune which has passed away, has been followed by a longer period of tranquillity. And that such praises are justly due to the English Constitution, the most ample testimony is afforded by the events which are now taking place in the political world. In the fairest and in the most intelligent countries of Europe, the attainment of a form of government assimilated to the English Constitution, is either earnestly desired, or has been successfully carried into effect. The most splendid consequence of victory is the power of compelling a subject nation to adopt the laws and customs of the Conqueror: but how much prouder are the unstained triumphs which England has thus gained, by the voluntary submission of her enemies, her rivals, and her friends!

Merits of the political Constitution.

When considering our civil and criminal codes, let us estimate them with impartiality. The seat of justice is filled by Judges whose integrity, as it is above all suspicion, is above all praise;

Part I. Ch. I.

Defects of the legal Constitution.

and the wisdom and humanity of the magistrate may alleviate the improvidence and harshness of the legislator. Yet the improvement of our laws has not by any means kept pace with the general amelioration of the political Constitution. Are we to congratulate ourselves by asserting, that the criminal laws of England are more equitable and less oppressive than those adopted in other parts of Europe? Such a eulogium will afford but slender reason for triumph, when we recollect that the proofs extorted by the rack are scarcely expunged from the protocols of the continental tribunals. But in order to appreciate the main defects of our laws, we will quote the opinions of a writer whose name commands unqualified respect. "The definition of civil liberty," it is observed by Paley, "imports, that the laws of a free people " impose no restraints upon the private will of the subject, which " do not conduce in a greater degree to the public happiness; by " which it is intimated, first, that restraint is in itself an evil; " secondly, that this evil ought to be counterbalanced by some " public advantage; thirdly, that the proof of this advantage lies " upon the legislature; fourthly, that a law being found to " produce no sensible good effects, is a sufficient reason for " repealing it, as adverse and injurious to the rights of a free " citizen, and without demanding specific evidence of bad effects. " This maxim might be remembered with advantage in a revision " of many laws in this country, especially of the Game Laws, of " the Poor Laws, so far as they lay restrictions upon the poor " themselves, of the laws against Papists and Dissenters; and " amongst a people enamoured to excess, and jealous of their " liberty, it seems a matter of surprise, that this principle has " been so imperfectly attended to."[a]

An enlightened Statesman[1] has commenced the re-enactment of the Criminal Law, upon a plan which, if pursued, will condense its bulk and remove many complexities and anomalies. Yet, whatever defects may have existed in the time of Paley, they have not been substantially diminished by the efforts of the Legislature. We have still to expect a revision, grounded upon the maxims and principles which he urged with so much energy and truth; and future generations will view the effects of the delay in the spreading circuit of the workhouse, and the towering fabric of the jail: for these will be the most lasting monuments of the nineteenth century, and of a people whose laws have shaped

[a] Moral and Political Philosophy, bk. vi. c. 5.

out a community in which every seventh man is either a criminal or a pauper treated like a criminal. A blind and superstitious reverence for established forms has been productive of manifold injustice. Laws, originally neither harsh nor oppressive, often become extremely burdensome, in consequence of alterations in the condition of society, depriving them of the checks and alleviations by which they were anciently accompanied and modified: and this gradual swerving from right is, of all defects, the most difficult to discover and remedy. The investigation of the circumstances attending our early jurisprudence may often suggest such equivalent compensations as could be now obtained, without endangering the public welfare. No method of reforming ancient institutions is so safe and efficacious as that which can be produced by an examination of their original nature, and which, by adhering to their pristine spirit, adapts them to subsequent times. Acting thus, we may become the mediators between past and future generations, moderating the restless activity of the young, and respecting the opinions of the old.

Whilst discussing the history and transactions of antiquity, we should always keep in view the proper direction of such inquiries. The labours of the archæologist are misapplied if they are considered as ministering only to curiosity: they have no real value, unless when they furnish materials for the history of human nature. And since the philosopher is justly anxious to become acquainted with the most minute particulars relating to the inhabitants of distant realms, there is surely an equal importance attached to the muniments and memorials which display the moral development of the institutions, under the protection of which we hold the possession of every worldly good, of every worldly enjoyment, and even of our lives.

Hereditary Ranks of society amongst the Anglo-Saxons.

According to the policy which appears to have prevailed amongst all the Teutonic nations, the Anglo-Saxons were divided into various classes, or legal Castes, whose rank was the measure of their estimation before the law. and from whose various privileges the entire system of the laws and constitution was deduced. The supremacy of the State was inherent in the Chieftains denominated by the terms, at first synonymous, of Ealdormen or Kings, and whose birth and lineage entitled them to claim the exercise of sovereign power. There was no strict and indefeasible hereditary succession in the Anglo-Saxon age: the son had only an inchoate right to the Crown of his father; and a competitor or a rival might prevail over the first-born or the

Royal Families, Ealdormen or Kings.

Part I. Ch. I.

nearest collateral heir, either by the choice of the nation, or the force of arms. But the royal authority, though it might be lost by the individual, could not depart from the sovereign line, to which it belonged. No subject could aspire to the rank which was vested inalienably in the royal families, and in them alone.

Anglo-Saxon Kings descended from Odin.

The Anglo-Saxon Chieftains, like the Kings of the North, the "Ynglingas" and "Skioldingers" of Sweden and Denmark, and the "Jarls" of Norway, were all descended from the deified Monarch of the Ases, from Odin or Woden, whose name, under various inflections, is known from the shores of the Polar Sea to the extremest verge of the Caucasian continent[1]. It may be admitted that their proud genealogies had no foundation in truth. The researches of the learned, who have attempted to fix the era, and to trace the wanderings of the "King of Men," have failed to dispel the darkness of early mythology. The Scandinavian Edda[2], as it is now modelled, assumed its poetical and legendary form after the ancestors of the Anglo-Saxons had migrated from their brethren. In Germany, the vestiges of the ancient belief are too scanty to furnish even the basis of a consistent system; yet, notwithstanding this obscurity, we can distinctly discover from the pedigrees of the Anglo-Saxon Leaders, that they and their Scandinavian kinsmen belonged to a mighty dynasty, uniting the royal and sacerdotal functions, and the members of whose different septs or branches were the primeval Priests and Sovereigns of the Teutonic tribes. Saxnote[3], whom the Salic Franks[4] unwillingly forsook, at the behest of Carloman[5], together with Woden, his sire, "and all the fiends their consorts," was the immediate progenitor of the Kings of Essex. Wecta[6], Wægdæg, Wihtlæg, and their brethren, were the roots assigned to other dynasties, who all join in claiming the children of Odin as their respective ancestors[a]. The remote consanguinity of the Anglo-Saxon royal families was strengthened by their conjugal alliances. It does not appear that an Anglo-Saxon King was ever legally united otherwise than to a daughter of Odin, the few marriages with foreign princesses are hardly to be considered as exceptions; and there are grounds for assuming, that, according

[a] MS. Cott. Tiberius B v. Sax. Chron. ed. Ingram, pp. 15, 18, 19, 23, 24, 28. Alfred's Bede, ed. Wheloc, p. 6. Flor. Wigorn. p. 688. Nennius, SS. Rerum Anglicarum, vol. i. p. 116. [Nennius, Writers on English History.] Textus Roffensis, pp. 59, 60, 61. Ynglinga Saga. Abrenuntiatio Diaboli; Capitulare secundum apud Liptinas, A.D. 743. [Renunciation of the Devil; Second Ordinance given at Lestines.]

to the strict principles of their constitutional law, an ignoble mother ought to have incapacitated her offspring from succeeding to the throne.

Eorls, Twelfhynde men, or Nobles.

Another great class or Caste was composed of the Nobility, who, in the Latin laws of the continental nations, are called "Nobiles," or "Ingenui." Amongst the Anglo-Saxons, persons of this rank bore the title of "Eorls," or "Eorlcund" men[1], or "Thane-born."[a] Aristocracy was the pervading principle of the Anglo-Saxon government; and though mere nobility, that is to say, nobility unaccompanied by landed property, did not confer authority, still the main privileges of the Patrician were the results of blood and parentage, and were not even suspended by the immunities of the clergy. In the shades of the Cloister, and beneath the roof of the Cathedral, the vain distinctions of the world were still recognized; nor was it fitting, as Egbert[2] declares, that the orders or vows of holy church should deprive the Bishop, the Monk, the Priest, or the Deacon, of the dignity and honour which the layman derived from "birth" and "nobility."[b]

Ceorls, Twihynde men, or Villeins.

The third class or Caste, composing the remainder of the people—for the Theowas or Serfs were not included in the Commonwealth—consisted of the "low-born," or ignoble "Ceorls," placed in a state of perpetual dependence upon the Nobility, and liable to many legal restrictions and disabilities, arising out of their relation towards their lords and masters. Yet these vassals were free, according to the ideas which the Anglo-Saxons attached to the word freedom, differing greatly indeed from modern notions: for servitude and liberty are words of ambiguous import; they are denoting tokens, which change their worth in every country and every age.

This division of the nation existed from the dawn of Anglo-Saxon history, and continued without any material interruption or variation until its close. In the first and last monuments of Anglo-Saxon jurisprudence, it is recognized, without hesitation, that every freeman was either noble or ignoble. The two orders of the Eorls and Ceorls, which are always named in marked antithesis to each other, were also respectively known as "Twelfhynde" men and "Twihynde" men, appellations synonymous in use with "Eorls" and "Ceorls," but derived from the maxims and principles of the Anglo-Saxon law, and which were the

[a] Devonian Compact, § 5. Customs, I.

[b] Dialogus Egberti, Concilia, vol. i. p. 84.

Part I. Ch. I.

consequences of the great superiority assigned by the constitution to the Aristocracy. Thus the Eorl and the Ceorl were not considered as possessing the same degree of credibility when their opinion was vouched in a court of justice. To render this observation intelligible, we must advert to the forms of Anglo-Saxon law. Circumstantial evidence was never received: a witness, swearing that he was neither "bidden nor bought," could only be allowed to declare that which he had "seen with his eyes and heard with his ears."[a] A witness could not be called to prove a fact unless he asserted it in positive terms. If such direct testimony could not be obtained, the plaintiff supported his claim by oath, and the defendant or culprit was allowed, under certain restrictions, to clear himself by compurgation[b1]. He swore that he was not liable to the demand preferred against him, or that he was innocent of the accusation laid to his charge; and if this exculpatory oath was confirmed by the oaths of a certain specified number of other persons, or compurgators, who, on their part, swore that they believed in the truth of the oath of their principal, then he was declared not guilty by the law. But the right of appearing as a compurgator, and in that capacity testifying to character, for such is the right, if its real import be kept in view, was apportioned according to the rank of the Noble and of the Villein, the declaration of six Ceorls, or Twihynde men, being only equal to the assertion of one single Twelfhynde man.

Unequal rights of the Eorl and Ceorl.

Compurgatory oath of one Eorl equal to the oaths of six Ceorls.

A further consequence of the unequal estimation of the Eorl and the Ceorl is to be discovered in the unequal amount of the "weres," the legal fines or compensations paid as the price of blood, or as the atonement for personal affronts or injuries. If a Ceorl killed an Eorl, the relations of the individual who had been slain might wreak their vengeance upon six Ceorls belonging to the clan or kindred of the offender. When amends were made in money or property, the "wergild" paid for the life of an Eorl was six times the amount of the "wergild" paid for the head of the Villein. Every minor offence was expiated in the same manner. Anomalies occur in the legal arithmetic of the Anglo-Saxons, which in its particulars is complicated, and sometimes obscure, and the damages do not always increase by regular intervals: but whenever a measure of compensation is given in money, or money's worth, the principle is consistent, notwithstanding any variation in the details; and the Eorl and the

The value of the life of one Eorl equal to the value of the lives of six Ceorls.

[a] Customs, II. [b] Ethelbert, §§ 13, 14, 74.

Ceorl are invariably placed at the opposite extremities of the scale[a].

But the full enjoyment of the privileges of the Eorl could not be imparted by birth alone. Nobility, with all its pre-eminence and worship, required the addition of property; and the line of ancestry, although it raised the noble above the rank of the villeinage, did not place him on a level with those individuals of the same class, who, qualified by the land which they held in full and absolute ownership and dominion, were entitled to command. And here again we may notice the conformity between the Anglo-Saxon and continental laws, the Frank losing the privileges of the *haute noblesse* if he had not land to enable him to support the dignity. According to the policy of the Anglo-Saxons, and which we collect from the entire course and tenour of their laws, rather than from any particular document, the Commonwealth was composed of "Hlafords" and of "Men," or, to borrow the feudal phraseology, of Lords and Vassals: whoever was not included in one class belonged to the other; whoever could not bestow protection was compelled to render fealty. The whole scheme of the Anglo-Saxon law is founded upon the presumption that every freeman, not being a "Hlaford," was attached to a Superior, to whom he was bound by fealty, and from whom he could claim a legal protection or warranty, when accused of any transgression or crime. If, therefore, the "Eorlcund" individual did not possess the real property which, either from its tenure or its extent, was such as to constitute a Lordship, he was then ranked in the very numerous class, whose members in Wessex and its dependent states, were originally known by the name of "Sithcund" men[b1]; an appellation which we may paraphrase by the heraldic expression of "gentle by birth and blood." This term of Sithcund man, however, was only in use in the earlier periods. After the reign of Alfred it is lost; and the most comprehensive and significant denomination given to this class is that of "Sixhynde" men[2], indicating their position between the highest and lowest law-worthy classes of society. Other designations were derived from their services and tenures. Radechnights[3], and Lesser Thanes, seem to be included in this rank, and to which, in many instances, the general name of Sokemen[4] was applied. But, however designated, the Sithcund man or Sixhynde man appears, in every instance, in the same relative

Inferior Nobility or Gentry, Sithcund men or Sixhynde men.

[a] Customs, III.

[b] Wihtræd,[5] §§ 7, 8. Ina, §§ 50, 51, 54.

Part I. Ch. I.

position in the community: classed amongst the nobility whenever the Eorl and the Ceorl are placed in direct opposition to each other; always considered below the territorial aristocracy, and yet distinguished from the villeinage by the important right of selecting his Hlaford at his will and pleasure. By common right the "Sixhynde" man was not to be annexed to the glebe. To use the expressions employed by the compilers of Domesday, he could "go with his land wheresoever he chose"; or, leaving his land, he might "commend himself" to any Hlaford who would accept of his fealty. The term "Commendation," so often employed in the great Anglo-Norman record, is found in the same sense in the Capitularies. It appears to have been originally the privilege possessed by the Freeman, of selecting his "Ealdorman," his "Senior," his Lord and leader, when he followed the banner which he himself had chosen. No portion of the Anglo-Saxon constitution is so difficult to understand as their feudality. But that "commendation," according to their laws, was accompanied by military service, is to be inferred from the circumstance of the duty being divided. A Sokeman might be commended to two or more lords, each entitled to their proportion of his commendation[a]. But how could a naked fidelity be severed into moieties or fractions? The obligation must have been followed by some definite duty and advantage, susceptible of an exact apportionment. Certainly the predial labours of the Villein were not exacted from the Sokeman; and when a Sokeman was commended to two Lords, the supposition that each Lord could command the sword of the dependent during twenty days, or half the usual period of military service, will alone give an intelligible meaning to the law. Compassing or imagining the death of the Lord was punished as treason. Life and property were liable to forfeiture for this inexpiable crime. No provocation could justify the Vassal in raising his hand against his legal protector, and the authority of the Lord indemnified him against the consequences of his participation in feud and private warfare[b]. The right possessed by the Vassal of transferring his homage was controlled by the law. The testimony of the Ealdorman was necessary, if he departed from the Shire in search of a new protector. Neither could the Lord, on his part, discharge himself from his liability by repudiating the Vassal, whilst any charge

Commendation, or the right of selecting a military leader.

[a] Domesday, vol. ii. pp. 182 b., 187 b., 188 b., 309, 321, &c

[b] Alfred, Preamble, and §§ 4, 38. Canute, II. § 39.

or accusation was pending against him. And though these mutual relations may have first originated out of a military organization, they ultimately became the pledges of domestic tranquillity, and the groundwork of municipal justice[a].

Ceorls, or Twihynde men, various names by which they were known. Bondes, Gebures, &c.

We have observed that the third division of society, and including all subjects who were not comprehended in the higher or lower Nobility, constituted the class or Caste of Ceorls or Twihynde men. These were known by other names, which usage had rendered synonymous, though of different etymologies. "Bonde,"[1] or "Bunda," a denomination frequently applied to the Ceorl, is derived from a verb which implies both to inhabit, and to cultivate or till. The Anglo-Saxons received it according to the former sense, the term being usually rendered by *Manens*[2] in their Latin charters. Sometimes it is emphatically employed in the sense of *Paterfamilias*, and hence the very different meanings now applied to the words husband or "Hus-bonde," and husbandman. "Gebur,"[3] the Teutonic "Bauer," or "Boor," is only another inflection of the root from whence Bonde is derived. In the Latin record of Domesday, the generic name of Ceorl is generally rendered by "Villanus." The holders of smaller tenements are distinguished as "Cotarii,"[4] in Anglo-Saxon "Cotsætan," and as "Bordarii,"[5] a term for which we cannot give the exact Anglo-Saxon equivalent, and probably borrowed from Normandy. But neither the difference of the appellations of the Villeins, nor the extent of their holdings, appears to have been accompanied by any essential difference in their station. The Ceorl or Villein, however named, may be defined as a tenant ascribed to the glebe; one who, performing predial or agricultural services, was unable to depart from the land which he held, and who, either by law, or by long-established custom equivalent to law, had acquired a definite and recognized estate in the soil. So long as the Villein performed his services, he was not to be removed from his land, nor was a higher rent or a greater proportion of labour to be exacted from him than what was due and

[a] Alfred, § 33. Edward the Elder, § 10. Athelstane, I. § 22; II. § 1. Canute, II. § 125. Charta Divisionis Regni Francorum, A.D. 806, § 10. [The Charter of the division of the Kingdom of the Franks[6].] Præceptum Lud. Pii pro Hispanis, A.D. 815, § 6. [The Precept of Louis le Débonnaire for the Spanish.] Præceptum Karoli Calvi pro Hispanis, A.D. 844, § 10. [The Precept of Charles le Chauve &c.]

Part I. Ch. I.

of right accustomed[a]. Yet with this certain right of occupation, defeasible only by neglect of the condition upon which the land was held, the freehold, or absolute dominion of the soil, was always considered to be in the Lord. The Ceorl was not "land-agend"[1]; he did not own the land; and his usufructuary interest afforded none of the qualifications resulting from real property. Similar to the Anglo-Saxon Ceorls in every respect, were the Villeins, who, under the name of "Liti," "Lathen," "Litones," or "Lassi,"[2] are noticed in the laws of the continental Teutonic nations, as a class, placed beneath the Nobility and above the Serfs, much restricted in their rights, subjected to the sovereignty of their masters, and yet defended by the law against the arbitrary authority of their Lords. A Ceorl thus circumstanced—a free-man—could, according to the legal language of the Anglo-Saxons, be given and bequeathed, bought and sold. These expressions, which sound so harsh, and seem so inconsistent with any degree of personal liberty, bore, however, a meaning differing essentially from that which we should now assign to them. In no instance can we find the Ceorl separated from his land. He was always a Villein appurtenant; and, notwithstanding the language which was employed, it must be understood that the gift, the bequest or the sale, was in effect the disposition of the land and of the Ceorl, and of the services which the Ceorl performed for the land, all of which passed by virtue of the will or the charter, a transaction widely differing from the transfer of a slave, whose person is the subject of the purchase. The assertion, therefore, not infrequently made, that a great proportion of the population of England was in a state of absolute servitude, cannot be warranted. And the most convincing proof that the rights of the Lord over the Ceorl and his goods and chattels, however burdensome, were limited and certain, is found in the fact that the Ceorl, even when in actual vassalage, could purchase his own freedom and the freedom of his wife and offspring: he therefore had the means of acquiring wealth, and the power of retaining it.

Services of a Ceorl could be transferred by bequest, gift or sale.

It has been supposed that changes took place in the situation of the Ceorls during the long period between the first settlement of the Anglo-Saxons and the Conquest, and that the Ceorl was gradually sliding into a state of slavery. Conjectures may be made, and not unreasonably, that, beneath a Danish Lord, the

[a] Laws of William the Conqueror, XXIX. Part II., *Proofs and Illustrations*, p. 139.

Englishman fared worse than under his native masters: yet we must confess, that the proofs are wanting which can convince us that any abridgment of the personal liberty of the Ceorl was effected at any period anterior to the accession of Henry Plantagenet. Nor was the situation of the Ceorl so base or humble as might be supposed. Though the privileges of the Twihynde man differed from those of the Eorl in degree, still they were the same in kind. A higher blood-fine might be exacted by the relatives of the noble, but, when paid, their peace was purchased in the same manner as if the rustic had fallen beneath the club of his compeer. Perhaps the essential distinction between the classes of the nobility and the plebeians, was the entire absence of political power in the Ceorl. In one single document we find an apparent contradiction to this assertion. It is the epistle in which the Villeins of Kent are represented as joining with the Prelates and Thanes in the acceptance of a new law, first promulgated by Athelstane in and for the Kingdom of Wessex[a]; but this instrument does not appear sufficient to rebut the inferences which result from the many existing accounts of proceedings in the judicial Folkmoots, none of which exhibit the Ceorl as joining in the deliberations of the assembly. Yet, at the same time that the functions of legislature and judgment were exclusively allotted to the superiors of the Ceorl, he was nevertheless an attendant of the Court, for the purpose either of testifying, or, as we now term it, of *presenting* those facts which were within his cognizance, as well as for defending his own rights, or complaining of the wrongs he had sustained.

Ceorls, entirely destitute of political power.

In the same manner that the Nobility were divided into the two ranks of landed and landless proprietors, so the Villeins in their Caste were separated into two analogous degrees. If the Eorl derived his best privileges from his Lordship, the Ceorl obtained his rights from the possession of his home. The aristocracy was composed of Barons and Vavassours[1]; the Villeinage consisted of Householders, "Heorthfæst men," and of those who, destitute of the qualification resulting from a known and permanent domicile, were considered only as the "Folgers," or "Followers" of their more wealthy equals[b]. If the Gentleman was compelled to find a Lord who would accept his fealty, so the Peasant was under the necessity of becoming a labourer and serving a master who would allow him to become a part of his

Ceorls, or Villeins, divided into two classes, Heorth-fæst men and Folgers, or House-holders and Labourers.

[a] Athelstane, V. [b] Canute, II. § 19.

Part I. Ch. I.

household. This relationship could be created as well "within "Burgh" as without, by an act of mere permissive hospitality. One night's shelter might be afforded by the Householder without incurring any responsibility. On the second, the stranger became a "Guest," and if he continued a third night beneath the roof, the master of the family was bound to consider the inmate as being his "Agenhine,"[1] and to answer for him accordingly[a].

Theowas or Serfs.

The "Theowas," the "Servi" of Domesday, were entirely destitute of political rights, and excluded in all respects from the political commonwealth. They were not reckoned amongst the people. The Theow was entirely the property of his Master, body as well as labour. Like the Negro slave, he was a part of the live stock of the land, ranking in use and value with the beasts of the plough: and it is to be apprehended, that the civil institutions of the Anglo-Saxons afforded but slight protection even for his existence. To a certain extent, the Church interposed; but the commutable penance of seven years' fasting imposed upon the Lady, if the female slave, when guiltless of any offence, expired beneath the scourge, was only a weak and nominal assertion of the rights of humanity[b]. It is not likely, however, that, in practice, the Saxon emulated the domestic tyranny of the Roman. Tacitus notices the mildness with which the slaves of the Germans were treated, and the cruelty even of the Tartar towards his enemy ceases when that enemy becomes his thrall: the guilt of slavery is always increased by the greedy avarice of civilization. In the earlier periods, there are many traces of domestic slaves. Domesday, of course, only enumerates the Servi belonging to the demesnes, and in such a manner as rather to lead to the supposition that they were attached to the soil, and had acquired an estate in the tenements which they occupied. This, however, is conjectural; and as the Theowas had ceased to exist, as a distinct class, and had become blended with the territorial villeinage before the commencement of our legal records, we have no evidence to guide us in our inquiry.

Origin of the above-mentioned ranks and orders.

The manner in which these various ranks were first established, is a subject of curious speculation. Religious institutions, the rights of the sword, the sentences of the law, and legal compacts,

[a] Lothar and Eadric, § 19. LL. Edwardi Confessoris, § 27.

[b] Pœnitentiale Ecgberti. Canones editi sub Edgaro Rege; Concilia, vol. i. pp. 129–232. [Egbert's Penitential. The Canons established under King Edgar.]

seem all to have concurred in creating this system of subordination and inequality, a system which was fully established in the earliest periods of the authentic history of barbarian Europe. When Cæsar invaded Gaul, he found the nation divided into three classes; the Druids, the Knights, and the People[a]. The Priesthood, or Clergy, were exempted from all secular services. Expounders and administrators of the law, the living oracles of public instruction and public justice, no tax or tribute was required from them; they did not share in the burdens of the State, nor did they co-operate in its defence, otherwise than by their influence and hieratical power. War was the constant employment of the Nobility: they were always engaged in attack or defence, or employed in deeds of high emprise. The Chivalry of Gaul followed no profession, save that of arms; and the dignity and consequence of a Nobleman depended upon the number of his followers, his Vassals or "Ambacti,"[1] a name which is found again in the "Ambiht menn" of the Anglo-Saxons[b]. Such a train of Vassals was the token of his magnificence and power; they were bound to him by the strongest ties of fealty and honour; and a Vassal who deserted his Lord was execrated as one who had committed the greatest of crimes. In the opinion of the Roman, the Plebs, or Third Estate of the Gaulish people, might be considered as condemned to servitude. Excluded from all participation in the government, never daring to act for themselves, never consulted in the national assemblies, oppressed by the most grievous exactions, and a prey to the violence and rapacity of the mighty, they were happy to obtain a precarious repose, by living under the dominion of the Nobles, who exercised the same rights over them which a master possessed over a slave. The protection of the law could only be purchased by the sacrifice of individual liberty.

State of society in Gaul before the Roman conquest.

"Druides" or Clergy.

"Equites" or Nobility.

"Plebs" or Third Estate.

Cæsar, in these passages, seems to speak in general terms of the whole of Gaul. Whether Celtic or Belgic, the whole country is equally within the purview of his observations, and the fact of the voluntary surrender of liberty in exchange for protection or for subsistence, is so fully confirmed by the Teutonic laws, as to afford the most convincing proof of his substantial accuracy. From the laws of the Frisians[2] we learn that the "liber homo," when urged by want, could voluntarily throw off his liberty, and

[a] De Bello Gallico, lib. vi. c. 13, 14; lib. vii. c. 38.

[b] Lye, s.v. *Embehtmen* or *Ambihtmen*.

descend into the villeinage; and not alone could he become the Vassal of a noble or of another freeman, but even of a "Litus."[a] The capitularies testify the manner in which the poor and needy were harassed and vexed by the Bishop, the Abbot, the Earl, the Judge, and the Centenary[1], until they surrendered their allodial property as the price of tranquillity[b]. These vexations appear to have continued uninterruptedly, the pretence changing with the occasion. At a much later period there are evidences afforded in Germany, of freemen placing themselves beneath the "mundiburd"[2] or safeguard of a powerful Baron, who promised to be a good and gracious Lord, but who gave a false and evil return, by exacting the toils of the Serf from those who had confided in his authority[c]. We may continue the chain of evidence, by quoting the laws of Henry I., which intimate, that a freeman might pass into the state of "servitude," an expression used in this passage as equivalent to villeinage; the transaction being accompanied by the significant ceremony of receiving a bill-hook and a goad from the hand of the master[d]. A singular repetition of this law is found in a distant clime. In Castile, an analogous custom had been transmitted from the Visigoths. If the proud "Hijo dalgo"[3] fell into poverty, and was unable to maintain himself in a manner befitting his nobility, he came before the council of the township, and declared to the townsmen his wish and intention of becoming such as they were: and then he brought a goad, over which he passed three times, saying, "Dexo "nobredat e torno Villano"; and he became a Villein forthwith, and all the sons and the daughters whom he begat whilst in a state of villeinage, followed the condition which their father had assumed[e].

[a] LL. Frisionum, tit. xi.

[b] Capitulare de Causis Regni Italiæ, A.D. 793, § 13. [Capitular concerning the Lawsuits in the Kingdom of Italy.] Capitulare Quartum, A.D. 803, § 17. [Fourth Capitular.] Capitulare Tertium, A.D. 811, §§ 2 & 3. [Third Capitular.]

[c] Eichhorn, Ueber den Ursprung der Städtischen Verfassung, &c. Zeitschrift für Geschichtliche Rechtswissenschaft, vol. i. p. 214. [Eichhorn, On the Origin of Municipal Governments, &c. Journal for the Historical Study of Jurisprudence.]

[d] LL. Henrici I. § 78. [Laws of Henry I.]

[e] Fuero Viejo de Castiella, lib. i. tit. 5. [Ancient Law of Castile.]

If these instances tend to shew that some portions of the people may have become subjected to the aristocracy by gradual oppression or by compact, it is also possible that the Anglo-Saxon vassalage may have resulted in part from the law of nations. Should we find reason to assume that the Ceorls or Villeins were a class representing a conquered people, whose ancestors had been subdued by the ancestors of the Eorls, or Nobility, their position in the State will cease to wear the semblance of capricious oppression, and their disabilities may be assigned to an intelligible cause. It was the same policy which induced the Frank to place the tributary Roman, or Romanized Gaul, beneath the followers of Clovis, and which created the class of "roturiers,"[1] that is to say, of tillers or cultivators, in almost every state of continental Europe. That the Liti of the Teutons were so circumstanced, is an opinion which has been long since maintained by those writers who first discussed the laws and policy of the Middle Ages[a]. According to the theory of these antiquaries, the Liti must be considered as the descendants of a people who had yielded to the supremacy of the ruling tribe, and who, after having been dispossessed of the absolute dominion of their lands, were allowed to purchase the privilege of continuing to occupy their former allodial property by becoming the tributary tenants of the victors. The characteristics of the system of Teutonic vassalage certainly receive an easy and plausible explanation, by adopting the hypothesis, that, whenever the two ranks of "Nobles" and "Liti" existed, the nation was composed of a people of Sovereigns and a people of subjects, united into one Commonwealth. Amongst the "Old Saxons,"[2] the traditions relating to such events, are adopted into their history. Witichind[3], one of their earliest chroniclers, relates that the Saxons were wanderers from Greece; part of the army of Alexander, who, on the death of that hero, were dispersed over the face of the world. Of the three hundred keels which composed their fleet, four-and-twenty landed their crews in the territory of the Thuringians, near the mouth of the Elbe. Here, after many battles with the inhabitants, they were compelled to return to their ships, and to agree that they would abstain from any further violence and rapine; and the Thuringians on their part conceded, that as friends, and in peace, the Saxons might purchase whatever

Vassalage resulting from conquest.

Opinions of the antiquaries of the seventeenth century.

Traditions of the continental Saxons.

[a] Du Cange, Glossarium mediæ et infimæ Lat. s.v. *Litus* [Glossary of Middle and Low Latin]; and the authorities there cited.

Part I. Ch. I.

they needed. Their means gradually decreasing, peace became irksome to them; and at this juncture, whether by accident or design, a young Saxon Chief, who landed from his vessels loaded with gold, and adorned with the golden collar and armlets, which were the insignia of nobility, exchanged his riches with a Thuringian for as much of the dust of the earth as filled his bosom. The Thuringian was loudly applauded by his countrymen for this triumph over the dulness of their enemies; and from the Saxons, the Saxon met with equal scorn. "Follow me!" he exclaimed, and strewing the dust over a large extent of territory, he bade his countrymen pitch their tents there and occupy the soil. The Thuringians loudly remonstrated against this breach of the treaty, but the Saxons replied, that they were only occupying the earth which they had bought. Many wars followed, and at length a treaty having been proposed, the Thuringian chiefs assembled without fear of guile; but the Saxons, who had concealed their broad blades—their *Seaxes*—beneath their garments, suddenly turned upon the unsuspecting Thuringians and slew them all[a]. A long and romantic narration follows, in which the chief personage is the hero Iring[1], or Irmin, who obtained, like Woden, the name of a deity. The details of his exploits cannot be here related; but the result, as given in the "Saxon Mirror,"[2] in which the substance of the tale is given without its poetical anachronisms and wild adornments, was, that the Thuringian Chiefs having been entirely rooted out, the Saxons spared the husbandmen, to whom they re-granted their lands, upon such terms and conditions as secured their dependence upon the conquerors. What is here stated as a legend, is confirmed when we arrive at the era of more authentic history. It is a tradition, interspersed with fable, but events entirely similar are recorded in the history of the Lithuanian[3] and Slavo-Wendic[4] nations, who, under their German Lords, were deprived of their lands, and degraded to the most grievous vassalage, in which their descendants continue to this day.

Origin of the Anglo-Saxon Ceorls.

If early conquest be supposed to have reduced the ancestors of the Anglo-Saxon "Ceorls" to their dependent station, it may be asked whether this event took place on the Continent, and whilst the "three tribes of Germany" were yet in their native

[a] Witichind apud Leibnitz, SS. Rerum Brunswicensium, vol. i. pp. 73, 74. [Witichind edited by Leibnitz, in Writers of the History of Brunswick.] Sachsenspiegel, bk. iii. art. 26.

seats; or whether they were the descendants of the original inhabitants of Britain. In favour of the first opinion, it might be urged, that, in consequence of the incessant wars waged by these tribes amongst themselves, the Teuton was frequently subjugated by his kinsman, and compelled to yield to the control of a Teutonic master. When the Franks subdued the Burgundians, the vanquished nation retained possession of their lands as the acknowledged vassals of the sons of Clovis[a]. And the earlier conquest of the Alemanni was accompanied by a complete acquisition of the dominion of the soil, which passed from the ancient owners and became vested in the Frankish King and nobility. A Ceorl bore no marks of British origin, he spoke the same language as the Eorl, he was considered as an Englishman: whilst, on the contrary, the "Wealh," the Briton, was distinguished from the Anglo-Saxon, and deemed an alien and a stranger.

Presumptions in favour of the British origin of the Ceorls.

But if, when we support this theory, we assume at the same time that none of the Ceorls or husbandmen were of British race, we must suppose that the ancient British inhabitants of Lloegria[1] were entirely extirpated[2] by the Anglo-Saxon strangers. It is difficult, however, to believe that the keels of the Angles, Jutes, and Saxons, could contain the original population of the Anglo-Saxon kingdoms as they arose successively in Britain. Cerdic and Cynric, Hengist and Horsa, and Bieda and Mægla, if this were the case, effected only the conquest of idle and unprofitable wastes. Neither Kent nor Sussex could have been tilled and sown by their scanty train of followers. The argument against the British origin of the Ceorls, which is deduced from the absence of any vestiges of a distinction of languages between the Lords and the Vassals, is strong; yet it is weakened by the presumption that a dialect closely allied to the Anglo-Saxon was spoken in Britain long before the arrival of the last invaders. The basis of the Anglo-Saxon is Belgic; and without attempting to define the territories occupied by the Belgians of Britain in the days of Cæsar, and who are, perhaps, the "refuge-taking tribe "of the people of Galedin"[3] recorded in the Triads[b], it must be admitted, that, so far as the boundaries of these tribes extended,

[a] Procopius, de Bello Gothico, lib. i. c. 13. [Procopius, Concerning the Gothic War.] Eichhorn, Deutsche Staats- und Rechtsgeschichte, vol. i. p. 86. [Eichhorn, History of Government and Law in Germany.]

[b] Ancient Welsh Laws, p. 375.

Part I. Ch. I.

Large proportion of Belgic roots found in the Cymric or Welsh language.

the Belgic tongue was spoken. The singular and philosophic structure of the Cymric fully shews that it is a primitive tongue; yet at least one-third of its vocabulary consists of roots which it possesses in common with the Belgic. In which language they are original, if, indeed, any language can be said to be original, matters not: the conformity attests either the affinity, the contiguity or the admixture of the respective nations. Should this assertion be disputed, should it be maintained that the whole original population of Britain spoke a Celtic tongue, yet it cannot be allowed, that the entire disappearance of the language is a proof of the annihilation of the people by whom it was spoken. It may be true, that almost every name in the pages of Anglo-Saxon history, distinguished either in church or state, exhibits its Teutonic origin; and that the geography of England was universally marked with foreign appellations, "a strange alter-"ation, which has persuaded historians, and even philosophers, "that the provincials of Britain were totally exterminated, and "that the vacant land was again peopled by the perpetual influx "and rapid increase of the Saxon colonists."[a] It is somewhat difficult to understand whether Gibbon assents to this plausible position; and perhaps he observed the historical fallacy which it involves. Language may frequently be a test of the genealogy of nations, but it is neither a universal nor an infallible test. Let it be admitted that the Gael and Cymry of the present day have resisted the encroachments of the language of the stranger, and adhered to the speech of their ancestors; yet in other instances, as in Gaul, the Celtic has been completely obliterated. Were we to reason solely upon the language of France, we must believe, that, in the fifth century, every Rustic was a Roman colonist; and yet we know that the Gaulish nations were unmixed and unbroken, and that their adoption of the language and manners of their masters was the consequence of intercourse and imitation. Even the names assigned to the great features of nature do not possess the eternity ascribed to them by the zealous etymologist, who often assumes that the mountain and its denominations are equally unchangeable. The first process is to name these objects in either dialect, and then the denominations derived from a harsh and obsolete tongue gradually give way to those of more familiar sound. With respect to the "Wealh,"[1] recognized as a distinct race by the Saxon laws, there is no difficulty

[a] Decline and Fall, vol. vi. c. 38.

in applying this term to the inhabitants who had submitted to the political supremacy of the Anglo-Saxon Kings, yet without being incorporated with the Anglo-Saxon people, a position in which the Britons of the West seem to have continued until the Norman Conquest.

British vassalage nearly identical with Anglo-Saxon vassalage.

Lastly, it is to be observed, that the British laws of vassalage bore a close affinity to the Anglo-Saxon code. In substance the British vassals were subject to the same obligations and duties as those which were exacted from the Ceorl. The "gavel," possessed by the bondmen of the British King, like the "gafolland"[1] of the Anglo-Saxons, was held by the performance of predial service. Work was done on the King's Manor[2], and thirlage[3] rendered to the Mill. The British vassals were to reap the King's corn and mow his hay. They were to keep his hawks, and feed his hounds, and to entertain his followers; and the rent in kind, the "farm," is regulated on the same principles, and specified nearly in the same words, by Howel[4] and by Ina[a]. All these considerations, when united, may tend to confirm the supposition that the "Ceorls" were originally the British cultivators of the soil, but into whose class individuals and families of Anglo-Saxon birth and blood may have been from time to time aggregated and introduced.

Theowas or Serfs.

Some of the "Theowas" may have been the offspring of British Serfs, but by far the greatest portion of the servile class consisted of freemen who had forfeited their liberty in consequence of their transgressions. A culprit who could not discharge the penalty, or "wite," became a "Wite Theow." He might be redeemed by his kinsmen; but if he was abandoned by them, if, in the words of the law, he clasped his hands, and knew not who should make amends for him, then slavery was his doom. During twelve months the affection or the charity of the kinsmen might release their relative; after this period had elapsed, his fate was sealed, the yoke could not be removed, and the punishment of slavery was transmitted to his descendants from generation to generation[b]. A debtor, who could not discharge his obligations, probably incurred the same punishment; at least, such a usage prevailed in Germany as late as the sixteenth century[c]. It is

[a] Ancient Welsh Laws, pp. 188, 189, 191, 195. Wotton, LL. Wallicæ, pp. 166, 167, 168, 175. Rowlandson, Mona Antiqua, pp. 125, 130. Ina, § 70.

[b] Edward the Elder, § 9.

[c] Heineccius, Antiquitates Germanicæ, vol. ii. p. 438.

Part I. Ch. I.

almost unnecessary to mention that this was also the British law, since the custom of enslaving the criminal or the insolvent seems to have been the policy of every nation in the ancient world, and still prevails to the fullest extent in various parts of Asia. A Theow was therefore no other than a convict: and the assertion that the majority of the Theowas were reduced to that situation by their crimes rests upon indisputable evidence. Slavery, therefore, was a legal punishment; and we find an apology for the ancient law by adverting to its leading principles.

"Theowas" in the situation of convicts.

It is possible, that, as we have stated, the differences of rank were originally the result of the distinction of races; but the disabilities of birth were not indelible; and though we can, without any impropriety, consider these ranks as Castes, yet the barriers which separated them were not insuperable. Amongst the fragments of the Anglo-Saxon customary laws, there is one entitled "The Old English Law of Promotion"; for its language is of past times, of by-gone days. In this law it is said, that, if a merchant crossed the sea three times at his own risk, he obtained the rank and pre-eminence of a Thane; yet the dignity so obtained must have been personal, and confined to the individual by whom it was acquired. Land was the only species of wealth which conferred hereditary nobility upon the plebeian. A helm and a hauberk and a gold-hilted sword might grace the person of a Ceorl, but if he had no land he was a Ceorl for evermore. Five hides of freehold land appear to have been the qualification which placed the Ceorl in the rank of the Thane. If this property continued in the family for three generations; if it was held by the Ceorl, his son, and his son's son, then the offspring of the last became admitted into the rank of Sithcund men, and were considered as gentlemen, of gentle blood and kindred, and entitled to the privileges of gentility. Following our text, we have called this the "Old English law"; yet, so far as the Triads of Dyvnwal Moelmud[1], and the laws of Howel the Good, are authority, it was equally common to the Britons, amongst whom the issue of a vassal became freed from subjection in the fourth generation, if, during three descents, the ancestors had held by grant from the King or Lord the quantity of land which in the version is denominated five acres[a]; but the last expression seems to require correction, for the ancient acre of the Britons of the West was one and the same measure with the ancient hide of the Anglo-Saxons,

English or Anglo-Saxon "law of promotion."

Perhaps of British origin.

[a] Ancient Welsh Laws, pp. 34, 186. Wotton, LL. Wallicæ, p. 154.

or an hundred modern acres; a fact which evinces a further conformity between the British and English laws.

Portions of Anglo-Saxon policy, to be paralleled in modern times.

At first sight, such a system of government as prevailed amongst the Anglo-Saxons, appears to be so totally dissimilar to our manners and customs, that we feel great difficulty in understanding its theory, still more in reconciling its maxims to humanity and justice. In this, however, as in many other portions of their policy, the discrepancy arises more from manner and form than from the essential principles of the law. Divested of their archaic garb, and placed in modern attire; translated out of their uncouth vocabulary, and read into modern language, we shall find that the points of approximation are more numerous than could have been anticipated. Are we offended at the subjection of race beneath race; do we revolt at the transmission of debasement from the fathers to the children, even to the latest generation? We need only cross the Atlantic, and in the flourishing settlements founded by the power of England, in the Colonies belonging to this free country, and in the Republics of North America, we may view the same spectacle, repeated under an aspect equally stern and forbidding, and unaccompanied by any of those institutions which ultimately broke the chains of Anglo-Saxon servitude and thraldom. The inequality of the rights of the different classes may be stigmatized as an arbitrary violation of the equity of the law; and it may be said that justice was meted out in proportion to rank and property, and not in conformity to the nature of the crime. But, before we prefer the accusation, let us pause, and substitute the word "damages" for the word "were," and we shall find that we have not entirely abandoned the reasoning of the Anglo-Saxon law, although we have narrowed its application. If a father, for instance, is under the humiliating necessity of bringing an action against the seducer of his daughter, will not the advocate of the defendant loudly expatiate on the condition of the injured female? Should she be in the humbler walks of life, will not the circumstance of her poverty be carefully proved, in order to effect a corresponding reduction in the price of her honour and her happiness? We need not say that the same valuation is rigidly applied in the case of the adulterer; therefore, when Alfred enacts that "the seduction of the wife of a Twelfhynde man or an Eorl "is to be compensated by payment of one hundred and twenty "shillings; of the wife of a Sixhynde man, by payment of an "hundred shillings; and of the wife of a Ceorl, by payment of

Disabilities of coloured population in the colonies, &c.

The Anglo-Saxon "were" equivalent to the modern "damages."

Part I. Ch. I.

" forty shillings,"[a] he does nothing more whatever than fix and declare the amount of the verdict, instead of leaving the assessment of damages, as we do, to the direction of the Judge, and the discretion of the jury.

In another point of view, we may discover a more grateful resemblance. The English law, no less than that national feeling, which is stronger than any law, fully recognizes the most decided inequality between the different ranks and orders of men. No nation was perhaps ever pervaded more thoroughly by the spirit of aristocracy, in which the lowest classes of society participate as fully as their superiors. Had our constitution, however, admitted of no other aristocracy but the aristocracy of birth, England would have experienced the calamities of those states in which all authority is monopolized by one caste or class, whilst the rest are utterly excluded from political importance and honour. Even in the earliest periods, the English laws tended to unite the various political ranks of the community into one body, not by humiliating the Noble, and placing him on a level with the Plebeian, not by depriving any one rank of its inherent hereditary and vested rights: but by acknowledging the doctrine, that these rights might be acquired by desert and industry, when denied by birth and parentage; and thus increasing the energy of the State without endangering its stability. However variably this principle may have been acted upon, it was at least always recognized in England. This is true equality; for it is the only equality which is conformable to human nature, and acceptable to mankind. Where it exists, as in England, it imparts contentment to each individual, and vigour to the Commonwealth. Where it is denied, no matter under what pretence of policy or expediency or creed, the vexation of the people becomes a never-failing source of weakness and rebellion. Dangers arise which no caution or wisdom can avert, and the tempest-tossed vessel of the State will find no haven of security, no refuge from the storm.

Beneficial results of the laws allowing the acquisition of aristocratical rights.

Tu, nisi ventis
Debes ludibrium, cave.

[a] Alfred, § 10.

CHAPTER II.

British Laws—Anglo-Saxon Laws—Settlement of the Danes—Norman Conquest—Laws of the Conqueror.

The political revolutions of ancient nations, not always accompanied by corresponding changes in policy.

In the preceding Chapter, some observations have been introduced respecting the pristine state of society in Gaul. It is with hesitation, and almost with dread, that I have entered the bewildering labyrinth of Celtic antiquity; but the history of the descendants of Gomer is closely interwoven with the annals of the Teutons, and the passages quoted from Cæsar, besides the direct illustration which they afford, are also of extreme importance in shewing that great political revolutions amongst ancient nations were not inevitably accompanied by corresponding changes in national policy. Could we not assign a certain date to the Commentaries of Cæsar, and did not the work possess the most unquestionable authenticity, his description might be considered as a forgery, in which the Kingdom of France, as it existed in the seventeenth century, furnished the platform for an account of Gaul in the days of Vercingetorix; the parallel is so complete that scarcely a word needs alteration. Does not Cæsar, therefore, bear testimony that the policy and institutions so generally ascribed to the Franks, the privileges of the clergy, the pride and power of the feudal nobility, the oppression and political annihilation of the third estate, were established before the Merovingians crossed the Rhine; that, subsisting in effect, though exercised by other hands, they continued undisturbed during the sway of the Romans, and that they were merely renewed and confirmed under the sceptres of the Barbarian dynasties? The complete subjugation of one nation by another nation conveys with it the idea of the total destruction of the ancient code, followed by the unqualified substitution of a new mode of government. More particularly so, if it be assumed that during such struggles the country was entirely desolated, and the inhabitants destroyed in the field or reduced to slavery, with the exception of the feeble remnant which was incapable of further

Part I. Ch. II.

resistance[a]. I shall not at present examine the effects of the Roman power on the Barbarians of Europe; but it may be remarked, that the influence of conquest was often counteracted and neutralized by the affinity of the conquering and the conquered nations. The waves which flowed in the same channel usually proceeded from the same source. Thus, in England, the original Belgic population of Lloegria, and their despoilers, and those who subdued the vanquished victors, were all brethren: Britons and Anglo-Saxons, Danes and Normans, were all relations; however hostile, they were all kinsmen, shedding kindred blood: and, even when the races were not so nearly connected, the pervading resemblances of the laws of the earlier ages contributed to lighten the yoke of conquest, and to disguise the innovations which were really effected by the transfer of sovereignty.

Effects of conquest often counteracted by affinity.

British laws.

So long as the Druids were the sole depositaries of British jurisprudence, the law was oral and traditionary. Their doctrines were recorded in verse: and the faint echoes of the Bardic strains can yet be discovered in the Triads of Dyvnwal Moelmud, who, "before the crown and sceptre of London were wrested by the "Saxons, reigned over the island." According to the historical Triads, Moelmud was the son of Dyvnwarth ab Prydain, whilst the British Chronicle represents him as the son of Clydno[1], a prince of the Cornish Britons, by the daughter of the King of Lloegria. And after the paternity, or male line of the Kingdom was destroyed, he "obtained it by the distaff, because he was "grandson to the King. And he was a very honourable and wise "man, and framed excellent laws in this island."[b] The Triads constitute the Molmutian laws, as they are termed by the monkish chroniclers; and some of the Cymric antiquaries assume that these venerable monuments of British policy are now extant in the identical form which they assumed in the fourth century before the Christian era: but the supposition rests entirely upon conjectures, and these not very tenable. Yet the "Triads of the "Community," as they are entitled, do in many instances relate to a mode of government entirely incompatible with the sovereignty established in the historical age of Cambria; and the same good fortune which protected the lays of the Bards of Strath

Triads of Dyvnwal Moelmud, or Molmutian laws.

[a] Robertson, View of the State of Europe[2], p. 2.

[b] Law Triads of the ancient Britons, translated by the Rev. Peter Roberts. Transactions of the Cymmrodorion, vol. i. p. 97, &c. Ancient Welsh Laws, translated by William Probert, p. 8, &c.

Clyde[1], may have equally preserved the maxims which declare "the rights and duties of the Cymry, such as they were before "they lost their privileges through the oppression, fraud, and "treachery of the Saxons." The code ascribed to Howel the Good, and from which he acquired the honoured title of the third and last beneficent sovereign of Britain, differs widely from the Molmutian Triads, at the same time that its sources are obviously analogous in character. "Hoel improved the laws of "the Isle of Britain, as the changes and circumstances which "occurred amongst the Cambrians demanded, lest what was good "might be effaced"[a]; the methodical order prevailing in this code shews that it was framed with considerable care, and the customs which it comprehends bear the impress of great antiquity. In some instances, it is true that there are slight interpolations of the laws, or alterations of the law enacted by Blethyn, the son of Cynvyn, and it also exhibits some words and terms which seem characteristic of a period later than that which is assigned as the era of its composition. Thus the mention of the "Chyngellawr," in which, under the uncouth disguise of the Cymric orthography, we may discover the "Chancellor," might induce us to place the compilation of the text in a period subsequent to the Conquest, when that dignity first became of note and consequence in England. Yet it is possible that this title, applied to a judge and fiscal officer, may have been borrowed from a Roman source. A scribe, or notary, is thus designated in the laws of the barbarian Franks of the Rhine[b]: and the style of the imperial palace may have been affected by a British Prince, in the same manner that the Tufa, the imperial standard, was copied by Edwin of Northumbria[c]; even if a few incidental terms are unquestionably proved to be of recent date, the adaptation of an ancient copy to the usages of a subsequent era may account for the more modern expressions which have suggested a doubt respecting its substantial antiquity. It is more important to remark, that the character of the British legislation is enhanced by comparison with the laws which were put in practice amongst the other nations of the Middle Ages. The indignant pride of the Britons, who despised their implacable enemies the Anglo-Saxons, as a race of rude barbarians, whose touch was impurity[d], will not be considered

Laws of Hoel Dda, or Howel the Good, 940, 948.

Partially amended by Blethyn, 1062–1072.

[a] Triads of the Isle of Britain, Ancient Welsh Laws, 398.

[b] Lex Ripuariorum, tit. 59, § 4. [Law of the Ripuarian Franks.]

[c] Hist. Eccl., lib. ii. c. 16.

[d] Hist. Eccl., lib. ii. c. 20.

as any decisive test of superior civilization. But the Triads and the laws of Hoel Dda excel the Anglo-Saxon and other Teutonic custumals in the same manner that the elegies of Llywarch Hên and the odes of Taliesin soar above the ballads of the Edda. Law had become a science amongst the Britons, and its volumes exhibit the jurisprudence of a rude nation shaped and modelled by thinking men, and which had derived both stability and equity from the labours of its expounders.

Whatever may have been the proportion of British population amalgamated with their conquerors, the loss of their independence and nationality was accompanied by the entire destruction of those institutions which had vivified the ancient doctrines of their laws, and by the loss of the literature whence they derived their sententious and subtle learning. If any important portions of the British jurisprudence retained a direct authority amongst the Anglo-Saxons, we must seek for them principally in the tenures of their lands, in the territorial organization of the country, and perhaps in the constitution of the tribunals which were founded upon that division. Other transmissions from the laws of the original inhabitants may be surmised, though they cannot be traced with certainty; opposed as the native and the stranger were to each other, the main lines and landmarks of their jurisprudence were identical. They agreed in their usages respecting crimes and punishments; they agreed in allowing the homicide to redeem his guilt by making compensation to the relatives of the slain; they agreed in the use of trial by ordeal[1], and by compurgation: and these being the chief features of the law and of its administration, the question, whether such analogous customs be of British or Saxon origin, is little more than a mere verbal dispute, very difficult to decide, and perfectly useless when decided.

Similarity of the main characteristics of the British and Anglo-Saxon laws.

Bede's account of the tribes who invaded Britain.

Bede has, in some measure, enabled after-times to identify the "three tribes" of Germany, who invaded the isle of Britain. "From the Jutes sprang the Men of Kent and the Wihtware[2], "the tribe which now dwelleth in the Isle of Wight, and the "other tribe in the country of the West Saxons, opposite to the "Isle of Wight, whom men still call by the name of the kindred "of the Jutes. From the Saxons, that is to say, from the land "now called the Country of the Old Saxons, descended the East "Saxons, the South Saxons, and the West Saxons. From the "Angles, that is to say, from the country called Anglia, and "which from that time until now is said to have remained

"waste, between the provinces of the Jutes and the Old Saxons, "descended the East Angles, the Mercians, the race of the North- "umbrians, and all the rest of the nations of England."[a] Part I. Ch. II.

The statement of the earliest Anglo-Saxon historian is the only written memorial of the warlike colonization from whence the English people arose, and the obscurity of history leaves a wide field for hypothesis and conjecture. Some of the names of the Saxon tribes are mentioned by the Greek geographers and the Roman historians. Some of their predatory expeditions on the shores of Gaul have also been slightly commemorated; but their internal history, anterior to their successful settlement in Britain, is entirely unknown. Yet we may ascertain the race whence they sprung, and the main body of the population of England is derived from the Belgic nation, one of the three great families into which the Teutons are divided. If the solid rocks are inscribed with indelible and imperishable memorials of the facts recorded in holy writ concerning the Creation and the Deluge, the history of mankind bears testimony no less decisive of the dispersion of the children of the Ark from the regions of the snow-clad Caucasus. The Teutons, like all the nations of Europe, must be tracked towards the East; and the geographical position of the various races is equivalent, in some measure, to a chronology of their migrations.

Anglo-Saxons, a Belgic population.

Bearing various names, some derived from localities, others from political relations, we find the Belgians, at the dawning of authentic history, dispersed along the northern tracts of Gaul and Germany, including also the Cimbric Chersonesus. Armorica is the most distant boundary or march-land of their settlements, from whence they are extended to the estuaries of the Baltic Sea, shewing the direction of the mighty army: and their situation seems to indicate that they had penetrated into Europe before the Goths and the Alemanni, the two other great families of the Teutons. In the northern parts of the Continent, many causes tended to give the appearance of distinct nations to the different branches or tribes of the Belgians. Subdued by the Romans, the Belgic Gauls imitated the customs of their conquerors, and we lose sight of the Barbarian in the toga of the citizen. They assumed the Roman, if not the Latin language, and forgot their own Teutonic tongue; and the rapid progress of the ungrammatical dialect which forms the basis of the modern

Belgians divided into many nations or tribes, Belgian Gauls, Old Saxons, Frisians, Jutes, Angles, &c.

Belgic Gauls.

[a] Hist. Eccl., lib. i. c. 15.

Part I. Ch. II.

French, divided them still more effectually from their ancient kinsmen.

Old Saxons.

After a war of two-and-thirty years, the "Old Saxons," another branch of the original Belgic nation, yielded to the sword of Charlemagne. They were treated with the greatest severity: and when the companions of the heroic Witichind[1] were delivered into the power of the conqueror, his cool and deliberate vengeance was scarcely satiated by the sacrifice of the four thousand five hundred victims who were decapitated on the banks of the Weser. But the merciless slaughter of the Saxon warriors was less destructive to the independence of the nation than the decrees which were promulgated from the Halls of Aix-la-Chapelle. Charlemagne secured his authority by the forcible expulsion of one-third part of the Saxon people, who were dispersed in various realms, whilst their territory was divided amongst Frankish rulers, Bishops, Counts, and Vassi[a2]; and the popular assemblies, in which the powers of government had been exercised, were almost wholly suppressed[b]. By these means, the institutions of the Old Saxons must have been shattered and denationalized, and they were gradually assimilated in their general character to the usages of the other nations of the empire; much was also altered by the adoption of the civil law, as taught by the later jurists; yet, notwithstanding these causes, the common law of the Old Saxons may still derive a useful commentary from the customs and usages of England[c].

Frisians.

A large proportion of the Anglo-Saxons belonged to the Frisian branch, of which various tribes still remain, planted along the coast of the North Sea, forming, as it were, a series of connecting stations with the principal settlement of this nation, which, about the eighth century, embraced the tract between the Scheld and the Weser, extending itself, therefore, from Flanders to Bremen. None of the Teutonic tribes have preserved their ancient customs with greater purity. Friesland was tributary to Charlemagne. But his empire included within it many

[a] Annales Einhardi, A.D. 792. Annales Laureshamienses Minores, A.D. 794–804.

[b] Annales Laureshamienses, A.D. 799. Capitulatio de Partibus Saxoniæ, A.D. 791, § 34.

[c] See Dreyer, De Usu Genuino Juris Anglo-Saxonici in explicando Jure Cimbrico et Saxonico. [Dreyer, On the proper use of Anglo-Saxon Law in explaining the law of the Cimbrians and Saxons.]

degrees of subjection, from a mere acknowledgment of his power to the most complete vassalage: and notwithstanding his dominion, the inhabitants, protected in their dreary moors and wilds by the fens and floods which surrounded them, appear to have maintained successfully every important privilege of independence. The Frisians are not specifically mentioned by Bede in his preliminary enumeration: but in a subsequent passage, when relating the mission of Egbert amongst the Pagans of Germany, he speaks of them as the first amongst the nations from whom the Anglo-Saxons deduced their origin[a]; and though the authority of a Byzantine historian is less satisfactory, still it may be observed that Procopius[1] notices the Frisians as one of the principal nations by whom Britain was then inhabited[b]. Under this general designation we are also probably to understand the Jutes and Angles, who seem to be other Belgic tribes, known by these geographical denominations. By the Frisians Hengist is deemed to be a Frisian King; and the legend of Rowena, or, as they term her, Ronix, is incorporated in their history[c]. A better proof of affinity is to be found in the resemblance of the Frisic and Anglo-Saxon languages; which in many instances amounts to an absolute identity. But the most conclusive argument of the unity of the nations is deduced from the judgments dictated by Wulemar[2], and incorporated in their respective laws, of the Frisians and Angles, shewing thereby, that they obeyed the dictates of a common legislator[d].

Frisians in Britain.

Jutes and Angles.

Wulemar, the common legislator of the continental Angles and Frisians.

These, then, were the ancestors of the tribes whom our historians usually designate as Anglo-Saxons. When they first settled in England, their law, like that of the Britons, was entirely oral and traditionary. It was a common law, existing as the common law of England still exists, in customs, whether local or national, recorded in the memory of the judges, and published by the practice of the tribunal. Before the introduction of Christianity, the northern nations annexed the functions of the Judge to the sacerdotal office: and some of the traditions of the law can be curiously elucidated by the fables of ancient superstition and

[a] Hist. Eccl., lib. v. c. 9.

[b] Procopius, de Bello Gothico, lib. v. c. 20.

[c] Winsemius, Chroniick van Vrieslandt, p. 43.

[d] LL. Frisionum [The Laws of the Frisians], Additio Sapientum [The addition by the Wise Men], tit. i. ii. iii. et viii. Lex Angliorum et Werinorum, tit. v. § 13 [The Law of the Anglii and the Werini].

Part I. Ch. II.

mythology. It cannot be ascertained that any of the Teutonic nations reduced their customs into writing, until the influence of increasing civilization rendered it expedient to depart from their primeval usages; but an aid to the recollection was often afforded, as amongst the Britons, by poetry, or by the condensation of the maxim or principle in proverbial or antithetical sentences, like the Cymric triads. The marked alliteration of the Anglo-Saxon laws is to be referred to this cause, and in the Frisic laws several passages are evidently written in verse. From hence also may originate those quaint and pithy rhymes in which the doctrines of the law of the old time are not infrequently recorded. Thus, the Kentishman asserted the liberty of his gavelkind tenure by the rude distich of "*The vader to the boughe—and the son to the plooghe.*" He redeemed his lands from the Lord by repeating, as it was said in the language of his ancestors, "*Nighon sithe yeld—and nighon sithe geld—and vif pund for the were—ere he become healdere.*"[a1] The forest verse, "*Dog draw—stable stand—back berend—and bloody hand,*"[b2] justified the verderer in his summary execution of the offender. And in King Athelstane's grant to the good men of Beverley, and inscribed beneath his effigy in the minster, "*Als fre—mak I the—as heart may think—or eigh may see,*"[c] we have, perhaps, the ancient form of enfranchisement or manumission.

Remains of the ancient poetry of the law.

It would afford a curious parallel to the modern circumstances of England, if the Anglo-Saxon laws could be divided into *Æ* or *Æwa*, customs or common law; *Asetnysse*, statutes; and *Domas*, adjudged cases or precedents[d]. But these terms, whatever distinction may have been originally intended, are employed indiscriminately, and the first specimens of Anglo-Saxon legislation are the "Dooms,"[3] which Ethelbert, King of Kent, "established with the consent of his Witan in the days of St. Augustine." Bede, who commemorates and praises this proceeding, adds that it was effected after the example of the Romans[e]. Alaric in the Breviarium[4], and Theodoric in the Edict[5], availed themselves of the elaborate jurisprudence of the Imperial law; but the successor

Laws of Ethelbert, King of Kent, 561, 616.

[a] Les Usages de Kent. Statutes of the Realm, vol. i. pp. 223, 225.

[b] Inst. 4. p. 294.

[c] See the Petition of the Commons on behalf of the Archbishop of York, in which the Charter is recited, Rot. Par. vol. iv. p. 85.

[d] I owe the suggestion of this division to Mr. Allen.

[e] Hist. Eccl., lib. ii. c. 5.

of Hengist was not instructed like the Visigoth and the Ostrogoth; and the expressions of the historian can only refer to the promulgation of a code, or regulation in writing, contrasted with a traditional and customary law. Ethelbert's statute offers no imitation whatever of Roman policy. Teutonic in language as well as in spirit, it relates only to the amount of the pecuniary fines, payable for various transgressions, the offences against the Church being first enumerated. These were of new introduction, but every other mulct was known before; and it is probable that the principal benefit of the law consisted in a fairer apportionment of the compensation to the crime than could be obtained according to the older customs. Until a metallic currency was introduced, the legal fines and penalties were paid in kind. In the laws of Hoel Dda, all such fines are reckoned in cattle; and the same mode of computation prevails in the Brehon laws[1] of Ireland, and the "Assythments for Slauchter" of the Scots[a]. An intermediate stage is denoted by the laws of the continental Saxons. Their weres are fixed in "solidi" or shillings, but the solidus was an imaginary denomination, and instead of counting down the coin, the offending party might drive his legal tender into the farm of the plaintiff. An ox passing sixteen months old, represented the greater solidus; the lesser solidus was a yearling ox, or a ewe and her lamb. Amongst some Saxon tribes the solidus was reckoned in corn; thirty bushels of oats, forty of rye, and sixty of wheat, being each its equivalent[b]. And it is most probable that the necessity of adjusting the ancient fines to the standard of Roman Britain was the cause which produced the enactment of the Kentish laws.

All the other Teutonic nations employed the Latin language in their codes, but the laws of Ethelbert are written in *English*, as the dialect is termed by Bede, and they afford the earliest specimens of jurisprudence in a Barbarous tongue. They now exist in a single manuscript, the volume compiled by Ernulphus[2], Bishop of Rochester, and the opening paragraph or section, containing the penalties imposed upon offenders against the peace of the Church and Clergy, seems to correspond in tenour with the recital given by Bede. But it is difficult to believe that the text of an Anglo-Norman manuscript of the twelfth century exhibits an unaltered specimen of the Anglo-Saxon of the reign

Laws of Ethelbert exist only in the "Textus Roffensis," compiled by Ernulphus, 1115, 1125.

[a] Skene, Regiam Majestatem, bk. iv. c. 36, 37.

[b] LL. Saxonum, tit. xix.

Part I. Ch. II.

of Ethelbert. The language has evidently been modernized and corrupted by successive transcriptions. Some passages are quite unintelligible, and the boldest critic would hardly venture upon conjectural emendations, for which he can obtain no collateral aid. Neither is there any proof whatever of the integrity of the text. It cannot be asserted, with any degree of confidence, that we have the whole of the law. Destitute of any statutory clause or enactment, it is from the title or rubric alone that we learn the name of the legislator.

Laws of Hlothhære and Eadric, 675, 685 and of Wihtræd, Kings of Kent, 699.

After the interval of more than a century, Lothar or Hlothhære[1], and Eadric, Kings of Kent, made additions to the laws which "their ancestors had established before them," and which principally relate to the singular system of pledges and warranty intended for the purpose of preventing theft and larceny, an institution holding a conspicuous place in the Anglo-Saxon policy. Wihtræd's laws, which were enacted at Berghamstede[2] in the ninth year of his reign, are chiefly ecclesiastical, affixing temporal punishments to spiritual offences. The laws of Hlothhære and Eadric, and of Wihtræd, though more intelligible than the laws of Ethelbert, still offer many difficulties, and the corruptions are equally irremediable, since they also can only be read in the recent manuscript of Ernulphus. No vestiges can be found of any other text. And as the ancient Latin version of the Anglo-Saxon laws, made about the time of Henry I., does not include the laws of the several Kentish kings, it is probable that they were concealed in the Cathedral archives, and entirely unknown to the translator.

Laws of Ina, circa 700.

Ina, who reigned over a mixed population of Britons and Saxons, promulgated a more extensive code or statute than those which proceeded from the decrees of the Kentish Kings. It was composed by the advice of his father, Cenred, and of the Bishops of London and Winchester; and in which the "Earldormen" and oldest "Witan" of his people also concurred. The enactments included in this capitulary, which, by their subsequent republications, became the basis of the laws, not only of Wessex, but of all England, are more intelligible than the earlier laws of Kent, from which, however, they are partially derived.

Alfred has been considered as the greatest legislator of the English nation. By the traditions of after-times, he was represented as the "wisest man that was in Englelonde"; and to him is ascribed an entire digest of the English law, a collection of the local customs blended into one uniform system in the

"Doom-book," compiled, as we are told, for the use of the court-baron, hundred, and county-court, the court-leet[1] and sheriff's tourn[2]; tribunals which he is said to have established for the trial of all causes civil and criminal, in the very district where the complaint arose[a]. Part I. Ch. II.

The authentic code of the legislator does not support these assertions. Instead of a digest of local customs, we find a capitulary, not differing in spirit from those of his predecessors, except in one characteristic peculiarity. Alfred endeavoured to strengthen his temporal jurisprudence by an appeal to the doctrines of revelation: his code is introduced by the Decalogue, and by a summary of the Mosaic precepts, relating more peculiarly to civil government, this abridgment being terminated by quoting the sanction which the law received in the Gospel[b]. The canons of the Apostolical Council of Jerusalem[3] are inserted, nearly in the words of the original. And Alfred concludes his scriptural introduction by appealing to that commandment which, as he observes, would render every human Doom-book unnecessary, if it were kept according to the will of Him, by whom it was imparted to mankind[c]. In the Preface to the chapters of enactments, the legislator himself informs us that these are rather to be considered as revisions of the laws of his predecessors than as new laws. Alfred first collected all the laws which his predecessors had recognized; some pleased him, others not: the latter he rejected, by the advice of his Witan; and, with the same advice, he enacted others in their stead. And all the righteous laws which had been enacted by Ina, or by Offa, King of the Mercians, or Ethelbert, King of Kent, who first received baptism, he retained and confirmed. The laws of Offa have not been preserved in their original form, and we cannot distinguish them in the capitulary of the King of Wessex. But the laws of Ina are annexed to the statute of Alfred; and, perhaps, we only possess them in his edition. There was no incorporate union of the Saxon kingdoms, no assembly possessing a binding and controlling power of legislation over all the kingdoms of England: and it is therefore probable that there were two promulgations of Alfred's laws, one statute for the West Saxons, and to which the laws of Ina were appended, and another for Mercia, since lost, and to which

Laws of Alfred, 872, 901.

Laws of Offa.

[a] Blackstone, Commentaries, p. 412.

[b] Exodus xxi. xxii. xxiii. Matt. v. 17.

[c] Acts xv. 23–29. Matt. v. 12.

Part I. Ch. II.

the laws of Offa were in like manner annexed. The laws of Alfred abound in valuable regulations of criminal jurisprudence, but they are entirely silent with respect to those institutions, which, according to later historians, are to be ascribed to his sound policy and wisdom.

Laws of Edward the Elder, 901, 924, and his successors.

The laws of Edward the Elder, as now extant, are comprehended in a small compass. Of this king, we have a writ, promulgating certain regulations, principally relating to "cheapening," and the laws of the market: another consists of enactments made at Exeter, for the kingdom of Wessex. To these follow the laws[1] of Athelstane, Edgar, Edmund, and Ethelred, of which the most material portions are repeated in the comprehensive Statutes which Canute, King of all England, of the Danes, and of the Northmen, enacted at Winchester, by the advice of his Witan. This monarch has been celebrated for his justice and equity[a]: and when the Crown was restored to the line of Cerdic, the confirmation of the laws of the intruder was exacted from the lawful sovereign. On the accession of Edward the Confessor, the Anglo-Saxon monarch was required by the clergy and nobility of the nation to engage that the laws of the Danish King should be inviolably observed, and the promise, which he confirmed by his coronation oath, was the condition and price of his restoration to the throne of his ancestors[b]. Hence the older body of laws acquired the name of the laws of the Confessor, not because he enacted them, but because they received a new and efficient sanction from his authority.

Laws of Canute, 1017, 1033.

Edward the Confessor confirms the laws of Canute.

About the time of the Conquest[c], England was severed into

[a] Historia Ramesiensis, p. 437.

[b] Knighton, p. 2338. MS. Cott. Titus A xxvii.

[c] One of the oldest accounts of the threefold division of England is given by Simeon of Durham in his introduction to the History of St. Cuthbert; and it will be convenient to place this description under the eye of the reader.—Anglia habet triginta duo Sciras extra Cumberland et Cornwalas. In Cornwalas sunt septem parvæ Sciræ. Scotland, Bretland[2] et Wict excipiuntur. Sunt hæ triginta duo Sciræ divisæ per tres leges, *Westsexenalaga, Denelaga, Merchenelaga.—Westsexenalaga* habet novem Scyras; Suthsexia, Suthrei, Kent, Berocscire, Wiltescire, Sudhamtescire, Somersetescire, Dorsetescire, Devenascire.—*Denelaga* habet quindecim Sciras; Eboraciscira, Snotingahamscira, Deorbiscira, Leorcestrescira, Lincolnescira, Norhamtunscira, Huntedunescira, Grantebrigescira, Northfolc, Sudfolc, Eastsaxe, Bedefordscira,

the three great divisions, of "West Seaxnalage," "Myrcenlage," and "Danelage." This separation, which subsisted in name till a much later period, is sometimes considered as indicating that each district was governed by its distinct and peculiar custumal. On the contrary, it has been contended by other writers that this opinion is founded upon a misapprehension of the chroniclers, "laga" signifying a province or jurisdiction as well as a law[a]. That the prerogatives of the King varied, though slightly, in each division, is, however, ascertained from the laws of Canute[b]; but the variations therein noticed are not in themselves of any great importance, and hence Spelman concludes, that "though we talk "of the West Saxon law, the Mercian law, and the Danish law, "whereby the West parts of England, the Middle parts, and those "of Norfolk and Suffolk, and the North were severally governed, "yet hold they all an uniformity in substance, differing rather in "their mulcts than in their canon, that is to say, in the quantity "of fines and amerciaments than in the course and frame of "justice." In those districts which were conquered and colonized by the Danes, the settlement of the invaders was probably accompanied by a partial introduction of their peculiar usages. It must be recollected that these strangers made the country entirely their own. Halfdane[1] divided Northumbria amongst his followers, who tilled and sowed the land which they had won. The portion of ancient Mercia constituting the Commonwealth of the Five Burghs, Leicester, Lincoln, Nottingham, Stamford, and

England divided into "West Seaxnalage," "Myrcenlage," and "Danelage."

Halfdane divides the Northumbria amongst his followers, 876.

Hertfordscira, Midlesexa, Bukingehamscira.—*Merchenelaga* habet octo Sciras; Herefordscira, Gloucestrescira, Wircestrescira, Scrobscira, Cestrescira, Steadfordscira, Warewicscira, Oxenefordscira. [England has thirty-two shires besides Cumberland and Cornwall. In Cornwall are seven small shires. Scotland, Bretland and the Isle of Wight are excepted. These thirty-two shires are divided according to three laws, *Wessexlaw*, *Danelaw*, and *Mercianlaw*. The *Wessexlaw* has nine shires, Sussex, Surrey, Kent, Berkshire, Wiltshire, Southamptonshire, Somerset, Dorset and Devonshire. The *Danelaw* has fifteen shires, Yorkshire, Nottinghamshire, Derbyshire, Leicestershire, Lincolnshire, Northamptonshire, Huntingdonshire, Cambridgeshire, Norfolk, Suffolk, Essex, Bedfordshire, Hertfordshire, Middlesex, and Buckinghamshire. The *Mercianlaw* has eight shires, Herefordshire, Gloucestershire, Worcestershire, Shropshire, Cheshire, Staffordshire, Warwickshire, Oxfordshire.]

[a] By Bishop Nicholson, in his preface to Wilkins, p. xvi.

[b] Canute, §§ 12, 13, 14.

Part I. Ch. II.

Settlement of the five Danish Burghs, 877, and of East Anglia, 879, 880.

Derby, became a Danish state in the following year; and the division of East Anglia amongst the army of Guthrum completed the colonization of "Danelage."[a] Within the limits of these acquisitions, and which, so far as East Anglia and its dependencies extended, were settled and confirmed by the treaty between Alfred and Guthrum, the conquest of the Anglo-Saxons by the Danes appears to have been as complete as that which was effected at a subsequent period by William of Normandy. We have not a Domesday by which we can evidence the transfer of the dominion of the soil to a new race of Lords and rulers; but the fact, which is told by the chroniclers in the clearest, though the most succinct phrases, is fully demonstrated by the consequences which resulted from the Danish Conquest. The old Anglo-Saxon names of places gave place to Danish appellations. 'North-weorthig" became "Deoraby,"[b] or Derby: "Streoneshalch," is the present Whitby. The vessels of Grimsby, if they enter a Danish port[1], can even now claim the exemptions derived from the Danish founder or restorer; and the topography[2] as well as the language of the North and East of England will afford the most convincing proof of the preponderance of the Danish settlers. It is not probable that this condensed and conquering population should have entirely abandoned their ancient laws. But as the Heathens of the ninth century proceeded from the very shores which formerly sent forth the Jutes and Angles, whose descendants had now yielded to the savage prowess of this second Colony, it is equally probable that the introduction of the Danish customs did not materially alter the anterior principles of jurisprudence, except so far as the latter were modified by Christianity; and after the Danes had submitted to the imperial supremacy of the Anglo-Saxon crown, they still continued to preserve the power of legislation. Yet the influence of the more civilized community was not unfelt, and the laws which Edgar recommended to the Danes, perhaps without immediate effect, were adopted after his decease, when both "Danes and Angles," in the midland and eastern parts of the island, were gradually uniting into one people. Beyond the Trent the process was more tardy; and it was not until the close of the reign of the Confessor that the laws of Canute were promulgated by the Confessor in the Earldom of

[a] Sax. Chron., pp. 103, 104, 106. Asser, pp. 8, 9, 11. Ethelwerd lib. iv. c. 3.

[b] Ethelwerd, lib. iv. c. 2.

Northumbria[a]. The chief peculiarities of the Danelage are to be sought rather in forms of policy and administration, than in the doctrines of the law itself. The denominations of the popular assemblies and popular tribunals seem to have been changed; the Wapentake[1] supplanted the Hundred. In the Five Burghs we discover a magistracy of "Lahmen,"[2] according to the usages of the Suio-Goths[3]; and in the conformation of the popular Courts of East Anglia we may trace closer analogies to the Scandinavian tribunals, than in Wessex and Mercia. We are thus compelled in many instances to seek for explanations of the English law in the codes and custumals of the Northmen; and to follow back the settlers to their native home, for evidence of the rights and privileges which they transmitted to their progeny.

Norman Conquest.

A peculiar aspect is given to the English annals by the Norman Conquest. In tracing the progress of the other great nations of modern Europe, from their first establishment on the ruins of the Roman empire to their full development as States and Kingdoms, we pursue our inquiries, amidst the changes and revolutions of dynasties, with difficulty and hesitation; yet we do not meet with any catastrophe occasioning so sudden and jarring an interruption as that great event, which, considered as an historical incident, has no parallel in character. Even in Spain, where so many kingdoms were rendered aliens to Christendom, the lineal succession of the nation seems to be more unbroken than in England. We arrive at the period when the whole Gothic monarchy is sheltered in the caverns of Covadonga, yet it still survives: Pelayo[4] and his descendants are the lawful successors of Hermeneric[5] and Athanagild[6]; Castile and Leon are gradually repeopled, by those, who, proud of the name of Goths, issue forth from the mountain fastnesses, in which they have preserved the laws which their ancestors adopted, and the language which they assumed. Not so in England, where the Norman Conquest forms a dark, determined boundary-line, where the accession of William becomes an era upon which we are accustomed to found chronologies and calculations, a term of beginning and of ending. Hence it has become extremely difficult to disconnect the train of ideas suggested by the Conquest, from the views which we take of Anglo-Saxon history, and of the growth and progress of the law; and we should be always on our guard lest we should be misled by the impressions which we unconsciously receive.

[a] Edgar, III. § 12. Sax. Chron., pp. 201, 254

Whatever colour of right may be given to the title by which William claimed the crown; by whatever efforts he may have attempted to acquire the character of a lawful Sovereign, and not of an invader, still his triumph appeared to place the English people in the lowest stage of degradation. Even after the lapse of centuries, the Conquest could not be considered with impartiality: for, when England was contending against those Sovereigns who laboured to subvert her civil and religious liberties, the arguments founded upon the occupation of the Kingdom by the Normans were still mooted by the zealous advocates who fanned the flames of mutual hostility, and who prosecuted their discussions, not as points of abstract inquiry, or as the themes of historical research, but as subjects of vital and practical importance. Domesday was the authentic record of the entire and unqualified subjection of the English race in the eyes of the inculcators of indefeasible hereditary right, who sought to prove that all the boasted franchises of England had proceeded from the mere motion and bounty of the Sovereign, and were therefore revocable at the will and pleasure of him who had made the grants[a]. In reasoning against these opinions, the earnest antagonists of prerogative and arbitrary power sought to strengthen the rights of the people by the assertion of their antiquity; they discovered the English parliament with all its powers and members in the obscure Witenagemot of the Saxon age, and endeavoured to prove that the safeguards of liberty survived, though Harold had fallen in the field[b]. Investigations, which, under any circumstances, are sufficiently difficult, thus became infinitely more perplexed by the passions nourished by the controversy. At this distance of time we may perhaps pardon such aberrations. Extending our indulgence equally to the Whig and the Tory, we may be sensible of their errors, and yet respect their memories for their exertions in the good cause of constitutional literature. Prejudice was the atmosphere in which they breathed: and they were equally appalled by the fears of tyranny and of rebellion. Despotism with her hundred arms, and Anarchy with the heads of the Hydra, were the phantoms that

Controversies between the Whig and Tory antiquaries and historians.

[a] The Freeholder's Grand Inquest, by Sir Robert Filmer. Brady, History of Boroughs. Brady, History of England, &c.

[b] Petyt, Ancient Rights of the Commons of England, and Jus Parliamentarium. Argumentum Anti-Normannicum, Tyrrell's Bibliotheca.

haunted the secluded study of each laborious antiquary; and his inquiries, naturally the most tranquil and unimpassioned exercises of the mind, became embued with all the acrimony of the contending disputants, whose industry was at once stimulated and deceived by party violence and party feeling.

With the cause which excited them, these delusions have in great measure passed away. A reminiscence of the more popular opinions may, however, be occasionally discerned, even in those who disclaim their influence. We do not listen to the declaimer who ignorantly founds his arguments for annual parliaments and universal suffrage upon the rights of the Commons under Egbert or Alfred. Yet a learned and noble historian could consider that the royal prerogative and the privileges of the people, during the Utopian age of Anglo-Saxon happiness, were marked out, defined, and established, in a manner inferior only to the form of government introduced at the revolution[a]; and the more accurate and reasoning writers of the present age, who do not participate in this enthusiasm, often incline the balance in favour of the supposition, that the laws and institutions which followed the Conquest were less favourable to liberty than those by which they were preceded.

William the Conqueror introduces few positive alterations in the laws.

If we consult the documents yet existing, it will appear that the positive influence exercised by the Conqueror upon the legislation of the realm was of limited extent. According to the testimony of ancient, though not of contemporary authorities[b], the Conqueror, about the year 1070, summoned a great assembly, composed of such of the English as were distinguished by their nobility, their wisdom, and their legal knowledge, in order that he might become acquainted with the English laws. It is said in some of the chronicles, that the recollection of his Scandinavian descent induced him to prefer the laws introduced into East Anglia and Northumbria by the Danes, and that he wished to establish these usages throughout the kingdom. Others assert that the choice of the law, whether Norman or English, was left to the assembly[c]. But all concur in stating, that the English, with one accord, demanded the restoration of the laws and customs known and used by them, the laws under which they

[a] See Lord Lyttelton's Preface to his History of Henry II.

[b] Chron. of Lichfield, MS. Cott. Cleopatra D ix. LL. Edwardi Confessoris. [The Laws of Edward the Confessor.]

[c] Wace, MS. Reg. 13A xxi.

Part I. Ch. II.

English said to have demanded the restoration of the laws of the Confessor.

were born, and such as had prevailed in the days of King Edward the Confessor. Not referring, as was afterwards supposed, to any code or statute which the Confessor had penned or granted; for, as we have already shewn, he only re-enacted the laws of Canute, but demanding the laws which had subsisted under the last legitimate king of Anglo-Saxon race, from whom the Conqueror deduced his title to the crown. To this demand William assented, and a statute or capitulary, which, according to its coeval rubric, contains "the laws which King William granted to the people of " England after the Conquest, being the same which King Edward " his cousin held before him," has been preserved in *Romance* and in Latin. Both texts agree so closely as to shew that the one must be a translation from the other. The Romance, or French text, which is only found entire in the history ascribed to Ingulphus[1], and which, as the Abbot relates, was copied with his own hand from the text which he procured in London, has long enjoyed the reputation of being the original[a]. If so, the code would be a testimony indeed both of English liberty and English servitude; for, whilst it proves that the Conqueror respected the Saxon laws, it also seems to afford evidence of the plan which he is said to have formed for the extirpation of the English tongue; and, if genuine, it must be ranked as one of the main landmarks in the history of the French language.

Existing texts of the laws ascribed to the Conqueror.

Certain re-enactments of the Anglo-Saxon laws.

That the substance of the statute is authentic may be admitted. It is in great measure a repetition of the laws of Canute; and, judging from internal evidence, the clauses not found in the laws of the Danish king, are nevertheless of Anglo-Saxon origin. But the employment of the French language in this solemn instrument is so utterly contrary to the usage and practice of the eleventh century, as at least to awaken some suspicion. At that period no law in France was ever written in the rustic and colloquial Romance language; whether the dialect can be referred to that age, must be ascertained by comparison with documents, if there be any, whose dates can be fixed by positive proof, and not by conjecture. The forms, it is true, have an archaic cast; but the idiomatic peculiarities and the orthography of the French language,

[a] See Part II., *Proofs and Illustrations*, pp. 121–149, where both texts are given from the following sources: MS. Harl. 746; Holkham MS. 228; Ingulphus, SS. Rerum Anglicarum [Ingulph, Writers on English History]; and the Copy published by Selden in his Notes upon Eadmer.

as spoken in England during the reign of Edward I., exhibit them nearly to the same extent: and if we are to found our opinions upon the language alone, we cannot place the French text of the Conqueror's laws in any higher period than the early part of the reign of Henry III. Nor are there any external arguments which can weaken the conjecture. We are told that "William enter- "tained the project of abolishing the English language: he "ordered, that, in all schools throughout the kingdom, the youth "should be instructed in the French tongue. The pleadings in "the supreme court of judicature were in French, the deeds often "were drawn in the same language, and the laws were composed "in that idiom." This popular notion cannot be easily supported. The example of a Norman aristocracy and a Norman clergy, aided by the literary influence of the writers of the Langue d'oil, and the utility of that dialect as a medium of general intercourse, ultimately rendered it almost as familiar amongst the English as their own tongue. But before the reign of Henry III. we cannot discover a deed or law drawn or composed in French. Instead of prohibiting the English language, it was employed by the Conqueror and his successors in their charters, until the reign of Henry II.; when it was superseded, not by the French, but by the Latin language, which had been gradually gaining, or rather regaining, ground; for the charters, anterior to Alfred, are invariably in Latin. All these circumstances taken together will induce a strong suspicion, that the French text, together with the introductory statement, must be numbered amongst the passages which place the chronicle of Ingulphus amongst the apocrypha of English history.

French Romance text of doubtful antiquity.

Besides this capitulary, there are other laws promulgated by the writs and charters of the Conqueror: some in Latin, others in the Anglo-Saxon language. Any changes resulting from these acts of legislation, were not considered as affecting the main principles of the national jurisprudence; for William commanded that his subjects should have and hold the laws of Edward in all things, with such additions only as he had enacted for the benefit of the English nation.

The concluding era of Anglo-Saxon jurisprudence is formed by the code or treatise ascribed to Henry I., which, though destitute of any distinct legislative sanction, appears nevertheless as an authentic compendium of the laws which then prevailed. "The "law of Edward, I restore to ye, with the emendations whereby "my father amended it, by the council of his barons." These

Laws of Henry I.

Part I. Ch. II.

are the words of Henry in his charter of liberties. And when we recollect that the transcript of the laws is deposited in the Exchequer, it will not appear improbable but that the work may have been compiled for the use of the Norman Justiciars who sat in the King's tribunal. It is a circumstance also worthy of remark, that a Latin translation of the genuine Anglo-Saxon laws is now extant, which was executed soon after the Conquest, and not by an Englishman, but by a Norman clerk. The translation, which is very close, is also in many instances very inaccurate, and the errors are of such a nature as could scarcely have been committed by an Englishman in an age when the Anglo-Saxon was yet a living tongue. This version appears to have been one of the chief sources of the laws of Henry I. But, in addition to the extracts from the Anglo-Saxon laws, we also find many notices of prevailing customs, and many observations and rules of practice resulting from the individual experience of the writer, with some few glosses from the continental laws.

Ancient Latin version of the Anglo-Saxon laws;

which version is one of the principal sources of the laws of Henry I.

Difficulties of understanding the Anglo-Saxon laws.

The explanation of these monuments of ancient jurisprudence is attended with considerable difficulties. Confused and elliptical in their style, the text itself is suspicious and incorrect. A literal translation is seldom practicable, and most frequently the sense can only be obtained by a paraphrase. The utmost respect is due to the memory of those learned men by whom the Anglo-Saxon laws were first given to the world; and the praise which is justly due to their labours is not diminished by acknowledging the occasional infelicity of their interpretations. The Latin language is ill adapted to render the Anglo-Saxon idioms: and the version departs still more widely from the original, when the translator attempts to attain an air of elegance, by rejecting the technical terms and phrases of the Anglo-Saxon law, and substituting others borrowed from a foreign jurisprudence; but these defects are more easily pointed out than avoided. Being regulations adapted to existing institutions, the Anglo-Saxon statutes are concise and technical, alluding to the law which was then living and in vigour, rather than defining it. The same clauses and chapters are often repeated word for word in the statutes of subsequent Kings, shewing that enactments which bear the appearance of novelty are merely declaratory. Consequently the appearance of a law, seemingly for the first time, is by no means to be considered as a proof that the matter which it contains is new; nor can we trace the progress of the Anglo-Saxon institutions with any degree of certainty, by following the dates of the

Defects of the versions of Wilkins and Lambarde.

Anglo-Saxon Statutes, principally declarations or confirmations of the existing law;

and consequently the law itself may be much more ancient than the Statute in which it first appears.

statutes in which we find them first noticed. All arguments founded on the apparent chronology of the subjects included in the laws are liable to great fallacies. Furthermore, a considerable portion of the Anglo-Saxon law was never recorded in writing. There can be no doubt but that the rules of inheritance were well established and defined: yet we have not a single law, and hardly a single document from which the course of the descent of land can be inferred.

Fragments of customary law.

Interspersed amongst the Anglo-Saxon statutes are some few chapters and fragments relating to forms, practices, and legal customs, often quoted as authentic laws, but which have no public sanction. They appear to be notes or recitals of customary law, and, as such, are entitled to credit: yet they must be examined and received with caution. For it is evident, that, in early times, great errors prevailed respecting the legal customs of earlier times. In the statute of Alfred, compiled by a Sovereign who was deeply versed in the history of his own people, the legislator asserts that pecuniary commutations were introduced after the conversion of the Anglo-Saxons, by a synod of holy Bishops and most worshipful Sages, who, for mercy's sake, enacted that the culprit should be at liberty to purchase his indemnity, by the payment of the fines which they fixed, unless in case of treason. It is hardly necessary to observe that there is no portion of the Anglo-Saxon jurisprudence which can be so assuredly referred to the pagan era, as the custom of accepting pecuniary compositions from criminals. And when such an inaccuracy can be discovered, it is a convincing proof that we may be deluded by ancient, and apparently trustworthy authorities.

Inaccurate opinions prevailing in early times respecting the origin of legal customs.

Constitutional history of the Anglo-Saxons much perplexed.

When investigating the constitutional history of the Anglo-Saxons, we are involved in perplexity. Some of the most important technical terms are nearly unintelligible, and have received the most contradictory interpretations. No period or era can be defined: we can neither affirm nor deny. Positive proof cannot be obtained of the commencement of any institution, because the first written law relating to it may possibly be merely confirmatory or declaratory: neither can the non-existence of any institution be inferred from the absence of direct evidence. Written laws were modified and controlled by customs of which no trace can be discovered, until after the lapse of centuries, although those usages must have been in constant vigour during the long interval of silence. Tribunals, Dignities and Offices are

known by ancient names after their real nature sustains a total transformation; or, changing their style and title, and yet continuing to hold the same place in the Commonwealth, they elude us in obscurity. No labour or sagacity can entirely unravel these enigmas; we can only proceed by the comparison of probabilities; an approximation to the truth is all that can be effected or desired: and the fitness of the hypothesis framed by a modern inquirer (for no scheme of the Anglo-Saxon policy can be anything but an hypothesis), must be judged, not only from its application to the particular page or chapter, but from its conformity to the entire system. The right exposition of the Anglo-Saxon laws may become an object of interest, not merely to the antiquary or the historian, but to the practical lawyer. Many questions of great importance in our present form of government can only be decided by reference to laws or usages which have prevailed since the time "whereof the memory of man runneth not to the contrary"; and the constitution of Parliament itself may depend upon the exposition of the most obsolete passages in the laws of a Canute or an Edgar. The truth of any conjectural interpretation of the Anglo-Saxon laws may be put to an easy and certain test by inquiring how far it was consistent with the frame of the Anglo-Saxon Commonwealth. When any historical theory does not agree with the general structure and practice of the Constitution, we may safely pronounce it to be unfounded. We may detect the error in the same manner that Linnæus baffled the ingenuity of his students, who produced to him a shrub composed of the twigs and leaves and flowers of different plants, so nicely adapted together, that the eye failed to discern their junction: but the factitious origin of the compound was immediately discovered by the mind, which perceived that the parts thus deceptively combined could never have been co-existent in living nature.

Practical applications of the Anglo-Saxon Law: Elective Franchise in Boroughs. Rights of Corporations to fines and penalties, &c.

No historical theory entitled to credit, if contradictory to the general structure of the Constitution.

CHAPTER III.

Formation of the Teutonic States—Settlements of Families—Septs —Tribes—Tenure of Land—Townships—Hundreds—Shires— Federative Governments of the Galatians, Greeks, and Etruscans —General Placita of the Franks—Supreme legal and legislative Courts of the Scandinavians—States of Guernsey, &c.— Tynwald of Man—Stannary Parliament—Ancient Modes of exercising the Powers of Election—Connexion between the Teutonic Forms of Government and the Teutonic or Scandinavian Mythology.

THE principles connecting the component parts of the Anglo-Saxon Commonwealth differed essentially from the grounds of modern policy and of modern public law. We consider that the powers of government result from the right which the Sovereign possesses over the land in which the people dwell: the allegiance of the subject arises from the spot of his domicile, or the accident of his birth-place; and the modern law of nations teaches us that the State is constituted by the arbitrary or geographical boundaries which determine its extent and limit its jurisdiction. This is the principle of the modern Commonwealth; but the scheme of government adopted by ancient nations was essentially patriarchal. Kings were the leaders of the people, not the lords of the soil; and their authority was exerted in the first instance over the persons of their subjects, not over the territories which composed their dominion. Such a form of society may yet be viewed in full vigour amongst the Scythian tribes. It may be instanced in the Tartar, who, like the Bedouin of the desert, stands aloof from civilization, and in this the last age of the world, still preserves the primitive impress given to human society. Encamped in Europe, or in Asia, the sway of the Khan remains unaltered: his power does not depend upon the sovereignty of the tract which produces the herbage grazed by the flocks and herds of his followers; nor does the influence which he exercises sustain any diminution, though the glebe itself may belong to

Ancient and modern Governments constituted upon different principles.

Ancient jurisdictions, personal and not territorial.

Nomadic Tribes, their municipal government resulting from the internal relations of

Part I. Ch. III.

the people, unaffected by the rights of the power claiming the sovereignty of the soil.

Kien-Long[1] or to Catherine[2]. The social bonds which unite the individuals of the Calmuck horde into a body politic, are equally strong, whether their tents be pitched on the banks of the Volga, or beneath the shadow of the wall of China. Possessing a moral identity, which cannot be delineated by the pen, or plotted out on the map, the Tartar State does not depend upon latitude or longitude; the nation is not circumscribed within a definite frontier. It is not the extent of the encampment which has given rise to the reciprocal obligations of the Sovereign and the Nomad; wherever the Tartar wanders, he obeys the banner of his Chieftain, and acknowledges no other fealty; whenever he hears the voice of a brother, he finds his country. Let us now imagine an army of Tartar hordes, independent of each other, yet allied under the command of one leader, a Gengis[3], or a Tamerlane[4], to whom they are all equally subjected, and who, having overspread a fertile country, are tempted to abandon their pristine customs, and to settle in the realm which they have won. In such a case, the territory is shared amongst them by occupancy: the course of the river, or the ridge of the mountain, will naturally separate one tribe from the next troop of invaders; and the boundaries of the provinces are produced by the expansion of the people upon the land, each tribe retaining the district upon which it has planted itself. Subsisting political demarcations may assist in the admeasurement of the allotments of the victors; yet the jurisdictions of this state do not spring from the political divisions of the soil; they are founded on the previous sovereignty of the hordes established in the several divisions. The degree of self-government vested in each distinct jurisdiction is not derived from the grant or concession of the common Chieftain, but retained by the members after they have become an aggregate whole.

Teutonic States, assemblages of Septs, Clans, Tribes,

In this manner the first establishment of the Teutonic States was effected. They were assemblages of septs, clans, and tribes; they were confederated hosts and armies, led on by Princes, Magistrates, and Chieftains; each of whom was originally independent, and each of whom lost a portion of his pristine independence, in proportion as he and his compeers became united under the supremacy of a Sovereign, who was superinduced upon the State, first as a military commander, and afterwards as a King. Yet, notwithstanding this political connexion, each member of the State continued to retain a considerable portion of the rights of Sovereignty. Every ancient Teutonic monarchy must be considered as a federation: it is not a unit, of which the smaller

and to be considered as Federations.

bodies politic therein contained are the fractions, but they are the integers, and the state is the sum total which results from them. Dukedoms and Counties, Burghs and Baronies, Towns, and Townships and Shires form the Kingdom; all, in a certain degree, strangers to each other, and separate in jurisdiction, though all obedient to the supreme executive authority. This general description, though not always strictly applicable in terms, is always so substantially, and in effect; and hence it becomes necessary to discard the language which has been very generally employed in treating on the English Constitution. It has been supposed that the Kingdom was reduced into a regular and gradual subordination of government, and that the various legal districts of which it is composed arose from the divisions and sub-divisions of the country[a]. But this hypothesis, which tends greatly to perplex our history, cannot be supported by fact; and instead of viewing the Constitution as a whole, and then proceeding to its parts, we must examine it synthetically, and assume that the supreme authorities of the state were created by the concentration of the powers originally belonging to the members and corporations of which it is composed.

English Constitution should be examined synthetically.

Ascending in the analysis of the Anglo-Saxon state, the first and primary element appears to be the community, which, in England, during the Saxon period, was denominated the Town[b], or Township. In times comparatively modern, this term has become less frequently used, and it has been often superseded by the word Manor[c1]. The latter is of Norman origin, and merely denotes a residence, and is frequently applied in ancient records to any dwelling or mansion, without any reference to situation, territory, or appendant jurisdiction. An explanation of the Saxon term may be required. Denoting, in its primary sense, the inclosure which surrounded the mere homestead or dwelling of the Lord, it seems to have been gradually extended to the whole of the land which constituted the domain. Amongst the Scandinavians, the settlement of the cultivator was designated as the Habitation, or "By," a syllable of frequent occurrence in the names of places in those parts of the island which were peopled by the Danes, who seem to have used it with great latitude[d].

Anglo-Saxon State, composed of Townships, Hundreds and Wapentakes, Burghs, Lathes, Rapes and Trithings, Shires.

Towns or Townships sometimes called Manors.

[a] Blackstone, Commentaries, vol. iv. p. 411.

[b] "Tun," from *Tynan*, to enclose. See Lye, s.v.

[c] Spelman's Glossary, s.v. *Manerium*.

[d] *By*, pagus [a village]. Hesychius, *βύριον*, *οἴκημα* [dwelling].

Part I. Ch. III.

Lords of townships.

Every Anglo-Saxon Township was subjected, in demesne, to a Superior; to the Sovereign, whether King or Ealdorman, who succeeded to the very extensive possessions of the British Princes; or to a Lord, a "Hlaford," or "Landrica."[a1] In some few instances the Township belonged to small corporations, if such a term may be used, whose members held the township as a joint property[b]. If it could be proved that all inheritances were partible amongst the male heirs, according to the custom of gavelkind, a joint-tenancy of this description would receive an easy explanation; but our ignorance of the laws of succession will prevent our assigning it with certainty to this cause. The right of the Lord over the Township was accompanied by the Sovereignty of the land. I apply the term of Sovereignty, rather than that of ownership, because the superiority of the township was unquestionably vested in him, although his right of possession does not seem to have extended beyond the demesne or "inland" which he enjoyed in severalty, and which he cultivated as his own. Another portion of the Township consisted of the Feuds which he or his predecessors had granted, by "Landboc" or Charter, to the Sokemen. Such a Benefice[2], "Præstarium,"[3] or Feud[4], which in Anglo-Saxon was denominated a "Læn,"[5] was usually created for one, two, or three lives, to be nominated by the grantee, after which it reverted to the Lord[c]; and during the existence of those derivative estates, the Lord, according to the language of the later law, had only the services and the reversion. Some Benefices, however, were granted in perpetuity. Analogous,

Townships, sometimes held by a small community, having the rights of seignory.

Direct dominion of the Lord over his "inland," or demesne.

Superiority over the Feuds, Præstaria, or Benefices, granted by Landboc, or Charter.

Other portions of the township held by folkright, or custom.

Gothis antiquis *byr*, a *bo*, habitare. Composita nonnulla hujus significatus remanent; ut *byfogde*, præfectus civitatis, *bylag*, jus civitatis, Ihre. [In ancient Gothic *byr*, from *bo*, to dwell. There remain certain compound words with this meaning, as *byfogde*, the prefect of a city, *bylag*, the law of a city.]

[a] Constitutions of Northumbria, § 59. Edgar, III. §§ 9 and 11.

[b] Domesday, vol. i. 23 b, 27 b, 47, 53, 54, &c.

[c] For the proper application of the term "*Læn*," see the record concerning the Six Sollens of land at Wuldham, Part II., *Proofs and Illustrations*, pp. 283 et seq. *Læn*, proprie, concessio, vel quod alteri datur. Specialiori vero sensu notat Feudum. Qui ejusmodi feudum tenebant, *Lænsman*, et *Lændirman* appellabantur, Ihre. [*Læn*, properly a grant, that which is given to another. But in a more special sense it signifies a fee—fief. Those who held a fee of this kind were called *Lænsman* and *Lændirman*.]

in many respects, to the Benefices, were the lands which were held by the tenants, whether Sokemen or Bondes, by folkright[1], or customary tenure; but these do not appear to have been generally subject to devise or alienation. Lastly, every Township contained those extensive common fields, or common leasowes, which the law assumed to belong to every town[a], and of which the usufruct was shared between the Lord and the men of the community.

Common Land a constituent portion of every Anglo-Saxon township.

As it appears probable that the Anglo-Saxons were not uninfluenced by the previous organization of the Country, and that the privileges of the Township were of complex origin, it becomes necessary to consider the territorial divisions which, according to the Welsh laws, prevailed amongst the ancient Britons. I shall not presume to investigate details which have baffled the researches of the Celtic antiquary; but without attempting to define the extent of the "Tyddin,"[2] the "Rhainder," or the "Gavel," it can be ascertained that the primary settlement of a British Sept, or perhaps a family, was the "Tref," or Hamlet. A Commot[3] contained fifty, a Cantred one hundred of these settlements, which, for the purposes of judicature, were also arranged into "Maenawls,"[b] or Townships, respectively containing four Trefs: so that, as the Commot included twelve Maenawls, or forty-eight Trefs, there were two Trefs not united in a Maenawl; one of which was appropriated as the King's arable land, whilst the other was his dairy pasture. Four entire Maenawls, belonging to the King, were held by the "Taeawgion," or Villeinage. The Villeins, as we have before observed, were liable to many onerous services: they entertained the King's guests, his huntsmen, and his henchman; they tended the pasture, and reared the King's horses and hounds; they supplied the provisions required for his rude hospitality; and, in addition to these exactions, and to the predial labour which they performed, they contributed to the defence of the state by furnishing beasts of burden for the army; and one hatchet-man was summoned from each Tref, who assisted in forming the huts or tabernacles for the troops when they were in the field. A fifth Maenawl was assigned for the support or

The Tref or Hamlet, the primary settlement amongst the Britons.

The Commot, containing fifty Trefs, and the Cantred, containing one hundred Trefs.

Twelve Maenawls or Townships in each Commot, of which, six belonged to the King, or his Officers.

[a] Edgar, III. § 7.

[b] *Maenan* (from *maen*, a stone), a district bounded by stone meres; otherwise called *Maenawr* and *Maenawl*. The similarity between *Maenawr* and *Manor* appears to be accidental (Owen Pughe's Welsh Dictionary).

Part I. Ch. III.

maintenance of the King's Chancellor or Judge; and a sixth, in like manner, to the King's "Maer," an officer who had great authority over the villeins. Suits, both civil and criminal, arising between them, whether for lands or blood-fines, were decided by the Maer, and he enforced the performance of their services. In these duties we recognize the fiscal minister of the King; but the Maer was to be of gentle birth and kindred: he had the privilege of receiving to his own use a proportion of the heriots and fines due from the men of the Maenawl; and he and his wife also were entitled to the "Amobreu," or Mercheta, the price of virginity, payable on the marriage of the daughters of the vassalage. Privileges of this description are, perhaps, vestiges of greater dignity; for the ancient Celtic title of Maer indicated state and honour. Amongst the Scots, a Maor was anciently the same as a Baron; Maormor, denoted a great Lord; and the Chieftains of Albania were thus denominated, until they assumed the Scandinavian name and character of Earls[a].

The "Maer," a Magistrate exercising municipal authority over the Villeins.

Maer, an ancient Celtic title, Maor, a Baron; Maormor.

Six Townships were thus vested in the King, or his officers; and the remaining six were held by the "Mab Uchaelwr," the free tenants, or gentry. The "Maenawl Rydd," or free Township, was not exempted from the rent of provisions rendered to the King, but a commutation in money might be accepted in its stead; and the free Lordships appear to have been entirely freed from the oppressive duties of hospitation. The "Trefs," which were, like their owners, distinguished into bond and free, had each respectively a different internal arrangement. A bond Tref contained three "Rhainders," of which, one was the common portion of the Villeins: whilst in the free Trefs, which were divided into four Rhainders, three were cultivated; and the fourth, which completed the "gavel," was the common pasture. The Triads also indicate that a portion of land, the "Cyvar Gobaith," was set apart in every hamlet for the purpose of assisting in its cultivation, the produce of this plot being applied in the purchase of implements of husbandry for the use of the community[b]. In the very obscure collections of laws and customs from which these particulars are collected, it is not always possible to distinguish between theory and practice; between the injunctions of the legislator, and the traditions of the bard. Whether

Six Maenawls in each Commot held by free tenants.

Proportions of Common Land in each Tref.

[a] See Chalmers, Caledonia, vol. i. p. 449, and the authorities there quoted.

[b] Ancient Welsh Laws, pp. 188, 189. LL. Wallicæ, pp. 157, 158, 164, 168.

the symmetrical division, which we have described, was always carried into effect, is a question which must be decided by those who, to a local knowledge of Cambria, add an intimate acquaintance with its antiquities. But there are many facts connected with the distribution of land in the Anglo-Saxon Kingdoms, which receive a satisfactory elucidation, by deducing them from the era when the Sovereign was the actual Lord of half the soil; and even in the fourteenth century many of the essential features of the system continued to be discernible in the Principality. The Triads contain many vestiges of the earlier stage of society, and which preceded the Sovereignty arising out of territorial occupation. At the remote period, when the Bardic institutions were in vigour, each "Cenedyl," or Tribe, formed a community, whose government is to be clearly distinguished from any of the rights of local authority[a]. The "Pencenedyl," who held his office by birthright, was acknowledged as the Head of the lineage, and commanded the submission of every individual who composed the clan, of which he was the ruler and protector. Recognized as one of the three royal authorities of Cambria, "it was the duty "of every one of the clan to attend to him, and his duty to attend "to every one of the clan"; and he was the natural representative of his people in the "Gorsedd," or "collected voting" of the country. It is stated, as the necessary qualification of the Pencenedyl, that he was to be in full vigour of body and of mind. Perhaps this law implies that he was to resign his office when incapacitated by old age or infirmity; but in all the more important duties, the hereditary Chieftain was associated to the "Teisbantyle," who, elected by the votes of the "Penteuluodd," or heads of families, was of equal authority with the Pencenedyl in all acts of authority and legislation. He acted for the clan in every place of worship, in every court of law, in every battle, and in every assembly; and, like the Pencenedyl, in whose authority he participated, he appeared as the representative of the people in the Gorsedd, the great assembly of all Cambria. In this manner each clan was ruled. Of what may be termed the municipal

The tribes or Cenedyllion of the Britons.

The Pencenedyl, the Head of the lineage, or Chief of the tribe.

The Teisbantyle, or elected representative of the tribe.

[a] *Cenedyl*, a kindred, clan, tribe, or nation (Owen Pughe's Welsh Dictionary); *Cineadh*, a race, tribe, or generation (O'Reilly's Irish Dictionary). Both these terms are evidently formed from the same root as Γενέθλη. Triads; Transactions of the Cymmrodorion, vol. i. pp. 104, 118, 119, 121, 125, 131; Ancient Welsh Laws, pp. 45, 56, 62, 63.

Part I. Ch. III.

jurisprudence of such a community, we have only very brief and transient notices; yet, in all the regulations respecting social rights, it can be discerned that the Cambrian derived his title to his individual possessions, to the privileges of the nation, and to the protection of the law, only in his capacity of a member of the tribe to which he belonged.

The patriarchal government commemorated in the Triads, had not entirely fallen into desuetude when the laws of Howel were compiled, though few of the offices of the leaders of the tribes were now actually performed. Recollected as the shadow of venerable antiquity, the testimony of the Pencenedyl was occasionally required in aid of the testimony of lineage; yet the general government of the country was assimilated to the state and march of the greater portion of feudal Europe. How the change was effected it is useless to inquire; the brief annals of Cambria give no information: but it must have been produced by causes which did not operate so strongly upon the Celts of Ireland and of Caledonia, who, long afterwards, were yet in a state of society, where power results only from the personal relations existing between the Chieftain and the people.

Appropriation of land, originally vested in nations, and not in individuals.

However familiar the appropriation of land may appear, the history of mankind affords sufficient proof of the slow development of individual possession, and the difficulty of arriving at the principles upon which such an exclusive claim is founded. The first and most obvious right accrues to the people, or nation, as is the case with the aborigines of North America. The same doctrine is established under another guise, in the fictions of the law, which teach that all land is held of the Crown. And amidst the variations of property and tenure, it can be discerned, that the direct dominion of the land is always an emanation, if this expression can be employed, of Sovereign power, and bestowed by the supreme authority. Thus, in ancient Germany, no one man was enabled to acquire any permanent property in any distinct portion or parcel of the soil; the absolute ownership being vested in the State, whilst the rights of the individual occupant were merely usufructuary. No German could claim a certain and definite allotment of land; nor could he point out the mere stones or boundaries of his property. Every year a fresh division of the territory was made by the supreme authority of those functionaries, whom Cæsar denominates, the Magistrates and Princes of the tribe, yet not an equal division: for it is expressly stated, that respect was had to rank and quality, and

Usufructuary occupation of land amongst the Germans.

Annual repartition of lands made by the Magistracy or Princes of the German Tribes.

the shares were calculated accordingly. But these specific apportionments did not exhaust the wide extent of the thinly-peopled wastes which the Germans occupied: there was always a large proportion of pasturage which still continued open to the community; and as, for their sustenance they principally depended upon their cattle, and not upon the products of tillage, the favour shewn to the more powerful did not greatly abridge the rights and comforts of the inferior members of the tribe. With the year, the estate in the allotment was determined; and, if Cæsar is a faithful narrator of the sentiments of the Germans, this annual division was rigorously enforced by a martial people, anxious to preserve their prowess unimpaired, and to maintain their liberty without diminution; and who, in this arrangement, had the express intent of discouraging agriculture, and preventing the inequality arising from territorial wealth, and its consequent influence and luxuries. Yet it may be suspected that such philosophic reasoning is rather to be ascribed to the Roman writer, than to the Germanic chieftains[a].

Celtic Clans, governed by the Ceanfenne or Ceancinnith; i.e. the Head of the lineage.

A Celtic country was originally inhabited by one clan or kindred, governed by the Patriarchal Chieftain, the Ceanfenne or Ceancinnith. He was the Head of the lineage, and in name, as well as in station, he is to be identified with the Pencenedyl of the Cymri[b]. The common possession of the soil, indicated with sufficient distinctness in the customs of the Scottish Highlands, existed to the fullest extent in the mother country of the Gael, and when their primitive policy was unaffected either by power or by law.

Irish custom of community of land, miscalled gavelkind.

Precarious and uncertain possession of land in Ireland.

Each sept or lineage of the "mere Irish" held its territory according to a custom which has been miscalled gavelkind; but which, in truth, is only a variation of the usages of the Teutons, as they prevailed before the Roman conquest. No Irishman enjoyed any landed property, if property it may be termed, otherwise than by a precarious possession. Though lands were annexed to the chieftainship, yet the Chieftain could not transmit the inheritance; for his heir was the Tanaist, named by the voices of the Sept, and they did not always wait for the death of the Chieftain before they installed his successor. This custom of tanistry prevailed, though not with equal license, in Scotland,

[a] De Bello Gallico, lib. iv. c. 1; lib. vi. c. 22. Tacitus, Germania, 26. See also Strabo, lib. vii. Germania.

[b] Home, History of the Rebellion, pp. 4, 5.

Part I. Ch. III.

where the Charter of the King often confirmed the authority of the Patriarchal Chieftain[a]. The lands of the inferior tenants, or subjects, were liable to constant mutations: each male heir was entitled to an endowment or appointment; but all the partitions were effected by the Ceanfenne. On the death of any individual holding land, he assembled the Sept, and made a new partition of all the lands amongst all the members. Every individual lost his possession, and received back a fresh estate, which was assigned to him at the discretion of the Ceanfenne. This division, however, was made as Cæsar describes the Teutonic partition, according to rank and seniority; and the son of the deceased took no share whatever, as the heir of his father: for it was only by claiming in the capacity of a member of the tribe, that he acquired his title to the new allotment[b].

Partitions of land, how made by the Head of the lineage.

New division of all the lands of the Sept on the death of any individual belonging to it.

Whilst this community of possession prevailed amongst the entire Sept in Ireland, the Cymri had gradually restrained the usage to the occupants of the villein townships or "Tawgdrefs," which were the endowment of the King. Notwithstanding the seignory of the King, enjoyment of the "Tir Cyfrith," or numbered land, was entirely vested in the community of the Villeins. No portion could revert to the King in demesne, no tenement could be alienated by the occupant, no son succeeded, as such, to the land of his father, but when any one Villein died, the whole Tref was divided in equal shares amongst all the inhabitants, without preference or distinction, excepting only a right, obscurely indicated, that the youngest son should be placed in the homestead of his father; and this division, or apportionment, was made by the Maer and the Chancellor, who performed the office which devolved upon the Ceanfenne of Ireland. But the custom which created this perpetual coparceny of villein land was modified in favour of the Cambrian nobles, and a different tenure prevailed with respect to the "Tir Gweltyawg," the free, or hereditary land,

"Tir Cyfrith," or numbered land,

divided amongst the British Villeins

by the Maer and the Chancellor.

"Tir Gweltyawg," or hereditary land.

[a] See Chalmers, Caledonia, bk. iii. c. 10, and the Charters quoted from Robertson's Index.

[b] Le Irish Custome de Gavel-kind. Hil. 3. Jac. 1. Le Case de Tanistry. Hil. 5. Jac. 1. Sir John Davys's Reports, pp. 29 and 49. Ware's Antiquities, p. 72. O'Reilly seems to consider that the Ceancinnith and the Ceanfenne are the same, and I have followed his authority; because, though Sir John Davys distinguishes the Chief from the "Ceanfinny," yet he gives the title of "Caput Cognationis" [The Head of the Clan] to the latter.

in which there was a fixed and certain property, and a definite succession, the estate being partible amongst all the lineal male heirs, according to the English custom of gavelkind, but with an important variation, which indicates a reminiscence, at least, of the ancient community of land. On the death of the last survivor of a family of brothers, all the male grandchildren could demand a second partition of the lands of their common ancestor; and a third partition, or land-shift, could be made again by the great-grandchildren, on the death of the last surviving grandchild; after which no further subdivision was allowed[a]. If a free landholder was compelled to abandon the country on account of any transgression, the right of recovering the land was preserved to the ninth generation, unless any other person had acquired a legal title, which was gained by the fourth descent after entry. But in this case, the heir of the banished man was, nevertheless, allowed to claim a moiety of his inheritance, which was divided between him and the persons in possession[b]. This singular provision is peculiar to Wales, and it shews how strongly the leading principle of community of land was grounded in the customs of the Cymri, notwithstanding the acknowledgment of ancestorial right. Howel affords the most minute directions for the conduct of real actions. Citations, and essoins, and pleadings are all detailed with great clearness; but in the provisions relating to a suit, no reference is made to a deed or a charter. Proofs were afforded by witnesses, or by compurgators; but no written instrument affecting the land was ever produced, and the cause was decided upon the evidence of lineage or of possession. The Cambrian pedigree was the record by which those who were of the same blood and family asserted their rights. And the care with which these memorials were preserved, was not merely the result of the honour annexed to ancestry—they were the registers of title, and the evidence of each man's property.

Hereditary lands, how divided.

Right of inheritance preserved to the ninth generation.

No mention of deeds or charters in the ancient Welsh laws.

British pedigrees, the evidences of title to lands.

If, as we are told by Cæsar, the Germans wished to discourage agriculture and civilization, the means were excellently adapted to the end: and to understand the rural economy of the Barbaric nations, we must always keep in mind that their habitations were merely encampments upon the land. Instead of firm and permanent mansions, constituting, not only the wealth, but the defence of the wealth of the owner, we must view the Teuton and

Dwellings of the Celts and Teutons, mere encampments upon the land.

[a] LL. Wallicæ, pp. 140, 160. Ancient Welsh Laws, pp. 178, 179, 190.

[b] LL. Wallicæ, pp. 140, 141, 147. Ancient Welsh Laws, pp. 178, 180.

Part I. Ch. III.

the Celt dwelling in wattled hovels and turf-built sheelings, which could be raised in the course of a night, and abandoned without regret or sacrifice, when the partition of the district compelled every inhabitant to accept a new domicile[a]. Such was the state of Ireland. The fruit of the Irish gavelkind was the entire desolation of the country. When the English entered the fertile fields of Ulster, they found an idle desert; and the general subjugation of the Celtic tribes, who, though gifted, and in no ordinary degree, with strength, courage, and intelligence, have yielded to every stranger, may probably be traced to their stubborn adherence to this system, which annihilated all inducements to industry, destroyed the sources of individual opulence, and exposed the nation at large to all the evils of sloth and disunion. A greater degree of permanence was given to property by the Cymri; and after contemplating the fated Island of Erin, we rest with comparative pleasure in the valleys of the British Snowdon. Yet the Cambro-Britons did not advance: and when Edward acquired the Principality of Wales, his new subjects lived nearly as their ancestors had done in the days of Roderick[1] or of Howel. In a letter, addressed by the Archbishop of Canterbury to the King, he describes the Welsh as dispersed over the country, without towns or fixed habitations, no one living near the other; idle and savage, and of "no profit in the world"[b]: and though the feeling of antipathy that dictated these terms of vituperation, may lead us to suppose that the Prelate exaggerated the vices of those who were so recently the implacable enemies of his Sovereign, still the history of the Principality is a sufficient indication of the wildness and disunion which had hitherto prevailed.

Mischievous results of the system of community of lands amongst the Gael.

Wildness and disunion of the Welsh when conquered by Edw. I.

Whilst the Celts retained so many portions of their ancient patriarchal and nomadic policy, the Teutons adopted a different course. Their nationality was less obstinate and unyielding; and, without entirely abandoning the policy of their forefathers, they soon mitigated the rudeness of their customary law, in such a manner as to be consistent with their own welfare, and with the improvement of society. In the provinces of Spain or Gaul, which had been civilized by the Roman Power, or within the sacred boundaries of Italy, the Goth, the Frank, and the Lombard

The Teutons modify the custom, so as to render it less injurious.

[a] Strabo, lib. vii. Germania.

[b] Letter from Archbishop Peckham to Edward I. A.D. 1284; Registrum Peckham in Lambeth Library. See Part II., *Proofs and Illustrations*, p. 275.

and the Burgundian possessed themselves of the villas and farms of the Patrician, and held them as he had done, reaping the harvest of the Senator, and drinking the produce of his vineyard. All the rights of the conquered were transferred to the conqueror; the Warrior inherited both the opulence and the land of the owner whom he had expelled; and though he was too proud to submit his person to the Roman law, still he could not introduce the usages of Germany without destroying the very form of society subsisting in the countries which he had subdued. Yet many approximations took place; the whole system of the military and other tenures of the Teutonic nations, from the period when they become known to us as the States of the Middle Ages, must be considered as the result of the intermixture of their own laws and customs with the jurisprudence of Rome; and the first chapters of the history of feudality, must be sought in the decrees of the Senate and the rescripts of the Cæsars.

Feudal and other tenures of the Middle Ages, the result of the admixture of Roman jurisprudence and Teutonic customs.

In those countries, as in Scandinavia, where the Goths were less blended with other races, we can distinguish the stages by which the common land of the tribe could be converted into the vested and transmissible Allodium of the individual; but land held in common, and as a common stock belonging to the community, continued to be annexed to every settlement, notwithstanding the introduction of a more exclusive tenure. In England, at the present day, this custom exists in the common lands of the Manor, and in the still more extensive tracts belonging to the ancient Towns and Burghs; all of which are the joint property of the Lord and the tenants, the Lord, whether an individual or a corporation, having the dominion and the usufruct, and the tenants the usufruct alone. A more singular adaptation of the Teutonic system is found in a community which has existed amongst the Frisians from the remotest antiquity. The district known by the name of the Theel Land contains about two thousand "Day-maths," a measure which was anciently known in this country, being still retained in the County Palatine of Chester[a]. This land is divided into portions called "Theels,"[1] which belong in common to the inhabitants, or "Theelboors."

Partial subsistence of the Teutonic customs, e.g. in the common lands of modern English Manors and Boroughs:

another modification exhibited in the Theel Land of East Friesland.

[a] Demath, *s.* a day-math, or a day's mowing for one man; generally used for a statute acre, but erroneously so; for it is properly one-half of a Cheshire acre, which is to the statute acre in the proportion of 64 to 30¼, consequently the Demath bears that of 32 to 30¼ to the statute acre, Cheshire Glossary, by Roger Wilbraham, Esq.

Part I. Ch. III.

Every Boor has a right to the ownership of one "Erb Theel"; but over which he has no power of alienation. On his death without issue, the Erb Theel reverts to the community. Should he leave one son, such son inherits. If more than one, then the Erb Theel descends to the youngest son: whilst each of the others receives an allotment of an entire Theel from the common lands; but held on the same condition, of reverting to the community in case of failure of lineal issue. Daughters succeed if there are no sons, but they obtain only a defeasible estate; the land reverting, as in case of death, when the heiress marries a Theelboor: since, if she continued possessed of the Theel, her marriage would subvert the rules of equality, which forbid the holding of more than one Theel by each individual. All the unappropriated Theels, which are treated as common land, are farmed on the account of the community, amongst whom the proceeds and profits are annually divided[a]; and notwithstanding the facilities thus given to marriage and subsistence, the Theelboors, in defiance of the "theory of population," have never been able to increase their numbers so as to exhaust the stock of common land. The system of the Theel lands appears to have resulted from an attempt to give such permanence to property as was consistent with agriculture, without departing entirely from the ancient Teutonic principle. And some arrangement of an analogous description may be found in every Teutonic population, where the practice of agriculture, and the progress of civilization, rendered it necessary to allow the acquisition of a permanent interest in the soil.

In the western parts of England, and on the borders of Mercia, the ancient boundaries of the British Lordships and Townlands seem to have been less disturbed than in the other parts of the island, where they constantly sustained great alterations. That many of these districts were larger than the Manors of the Anglo-Norman period, can be ascertained, by comparing Domesday with the inquisitions[b] upon which it was founded, a comparison which will shew that it was the policy of the Conqueror to sever those districts when he granted them out to his followers. The encroachments of conflicting jurisdictions have tended to confuse

Anglo-Saxon Townships split and divided by the Conqueror.

[a] Wiarda, in his Preface to the Asegabuch, pp. 11, 12.

[b] Inquisitio de terris quas laici tenuerunt in Grantebriggescira; MS. Cott. Tiberius A vi. [Inquest of the lands which the laity held in Cambridgeshire.]

the ancient limits; and, in practice, the ecclesiastical circumscription of the County into Parishes, has superseded the ancient legal divisions: it is often difficult, therefore, to identify an Anglo-Saxon domain with the seignory of a later period, except in the case of the royal demesnes; for even those which were bestowed upon the Clergy, appear to have been liable to great mutations.

Every township was the seignory of a Lord, but the jurisdiction, which appears to have been inherent in the district, was not exercised without the participation of the inhabitants. No details are preserved of the mode in which it was called into action; nor could it be expected that any record could be produced of tribunals, whose proceedings were never reduced into writing. But we are supported in the assertion of the Anglo-Saxon origin of the Manorial Courts Baron, as they existed after the Conquest, by quoting the passage extant in Domesday, from which it can be ascertained, that a certain number of Sokemen were required in order to hold the pleas of the Court, and that, without the suitors, the jurisdiction could not be enjoyed[a]. And although we have no absolute evidence relating to the Court Leet, to which the Anglo-Norman resiants rendered their suit and service, still its organization equally belongs to the oldest times. A very singular and remote authority can be adduced for the legislative power originally belonging to these communities. The earliest laws of the Goths, those ascribed to Diceneus[1], their first legislator, were termed "Bellagines," or By-laws, the laws of the By, or Habitation[b]; a name which we have extended to all municipal regulations, and from thence, by an easy extension, or perhaps misapplication, to the laws proceeding from any Corporation. But it was originally employed to denote the laws and orders made in the Courts Leet or Courts Baron, the ancient territorial jurisdictions of the Township, in those peculiar cases whereto the public law does not extend. We may adopt this modern definition, for it is entirely accordant to antiquity. Scotland, in like manner, had the laws of Burlaw, or Birlaw, which were made and determined by the Neighbours, elected by common consent, in the Burlaw or Birlaw Courts, wherein knowledge was taken of complaints between neighbour and neighbour, which men, so chosen, were judges and arbitrators, and called Birlaw-men[c].

Courts of the Township analogous to the more recent Court Baron and Court Leet.

Earliest laws of the Goths, termed Bellagines or By-laws.

By-laws made by Courts Leet and Courts Baron.

Laws of Burlaw in Scotland.

[a] Domesday, 193 b. [b] Jordanes, de Rebus Geticis, c. ii.

[c] Skene, de Verborum Significatione.

Part I. Ch. III.

Until the recent devastation of Sutherland[1], the Clans settled all questions relating to the pasturage of their glens, by a jury composed of the most ancient inhabitants, and constituting a Court of the same nature[a]. In all the districts of Germany which have retained any vestige of their early jurisprudence, we find the Bauern-Gericht invested with powers similar to the English Manorial Courts. And fortified by these concurrent examples, it is difficult to believe that the English Sokemen and Twihyndemen could have gained their rights under their Norman conquerors.

Bauern-Gericht in Germany.

Jurisdiction of the Anglo-Saxon Townships.

The Saxon charters supply a complete enumeration of the privileges attached to the Lordship, which are set forth after the description and boundaries of the territory, in the manner yet practised in modern deeds, and some of the franchises so described are not entirely unknown to the modern English law. "Sac and Soc,"[2] the terms which occur most prominently in this uncouth nomenclature, generally denoted the privilege of trying actions arising within the Township. One Township might be within the Soke or jurisdiction of another; and North of Humber, this species of subordination existed to a very considerable extent. In the South, it was of less frequent occurrence, though by no means uncommon; and if we may borrow an elucidation from a later period, such a Township appears to have resembled an Honour. The rights of "Soke" were extremely varied and divided. In some Townships, we find the concurrent rights of the King and the Lord, and the Earl and the Hundred; and whilst the soil of the Township was vested in one individual, the jurisdiction over the tenants might belong, either wholly or partially, to another Lord.

Sac and Soc.

Infangthief and Outfangthief.

Toll and Team.

"Infangthief" and "Outfangthief" entitled the Lord to execute the summary justice which was administered when the thief was apprehended in possession of his spoil. "Toll" and "Team" related to the franchises of the market. And the right of receiving the fines, which originally belonged to the Sovereign, or to the Hundred, and were payable for breach of the peace, bloodshed, and other transgressions, may be reckoned amongst the immunities of the Township, though not strictly connected with jurisdiction. An officer, entitled the "Gerefa,"[3] "Tungerefa," or Reeve, and corresponding to the Cymric Maer, was the efficient ruler of the Ceorls or villeinage. Like all names of office and dignity, the term Gerefa was employed with much

Grith-bryce, Bloodwite, Leirwite, &c.

The Gerefa, Tun-gerefa, or Reeve, corresponding to the Maer. (See above, p. 54.)

[a] Loch, Account of the Improvements in Sutherland.

latitude; and it appears to have been applied, in the first instance, to a much more elevated functionary, to the Count, the Companion of the King[a]: but there are so many examples of the same title, Alderman, for instance, possessing the most unequal significations, that this circumstance will not, in itself, discredit the assumed etymology. No Township was without a Gerefa, who was allowed, in the Folkmoots, or judicial assemblies, to speak and act on the behalf of the Twelfhynde man, who was the Lord of the township, and to give such testimony as would have been given by the Lord himself; and the right of being so represented was one of the peculiar privileges of the aristocracy[b]. He appears to have been the fiscal officer of the Lord; he received the Seignorial tolls and dues, and superintended the performance of the agricultural labours of the villeinage. Yet, although the Gerefa was thus the Provost and minister by whom the rights of the Lord were enforced in the Township, he seems to have been usually nominated or elected by the tenantry, who chose him by the presentment of the Leet Jury; at least, such was the general custom after the Conquest, a custom which was recognized as a part of the traditionary common law, and to which we may assign the same antiquity as to the other portions of the system.

Gerefa usually chosen by the villeinage.

The inhabitants of a Township were bound to maintain peace

[a] *Gerefa*, Comes, Socius, Præpositus, Præfectus—hinc vox recentior, *Greve*, *Graf* (*Graphio*), *Reeve*, cum compositis....Tandem vero, quocumque demum sensu occurrit hæc vox *Gerefa*, nihil aliud sonat quàm *Gefera*, Comes, cujus locum per metathesin occupat, Lye. [*Gerefa*, Companion, Comrade, Provost, Prefect; hence the more recent words *Greve*, *Graf* (*Graphio*), *Reeve*, with their compounds.... But, really, in whatever sense this word *Gerefa* appears, it means nothing else but *Gefera*, a Companion, the place of which it occupies by metathesis.] Itaque sive *Gefera* dicas, sive per anagramma *Gerefa*, semper Comitem dicis, socium atque sodalem. Tales autem erant primi illi atque vetustissimi Comites, nempe socii et sodales principum, non domi tantum, sed etiam in expeditionibus et profectionibus bellicis, Wachter, Gloss. [And so, whether you say *Gefera*, or by anagram *Gerefa*, you always say, Companion, comrade or fellow. For such indeed were those first and most ancient Counts, namely, the companions and fellows of the leaders, not only at home, but also in expeditions and warlike journeys.]

[b] Ethelred, § 1. Canute, II. §§ 20, 27.

Part I. Ch. III.

and good order amongst themselves; they had the keeping of their own police. If a crime was committed, the men of the Township were required to raise the hue and cry, and to follow and apprehend the offender; and, unless discharged from their general obligations by the special associations of the tithings, of which we shall treat hereafter, they were bound to enforce his appearance to the law. In the judicial assemblies of the Hundred and the Shire, the Township was represented by the Gerefa, and by four good and lawful men, who were required to perform the duty of accompanying him to the Folkmoot[1]. In the Anglo-Saxon period, the Priest also seems to have attended with the Townsmen[a]; but after the Conquest, the Clergy withdrew from the Courts of purely secular authority. The presence of the Reeve and Townsmen was indispensable; and the necessity of obtaining their testimony, in almost every case of criminal jurisdiction, and which could not be determined without such proof, rendered them an essential portion of the assembly.

Township represented in the Hundred and Shire Courts by Four Men and the Reeve.

The earliest notices respecting the Teutonic Townships are to be collected from the laws of the Salic Franks. A "Villa"[2] was entirely the property of the inhabitants, and no stranger could settle within its boundaries, unless with the consent of the whole incorporation. Any one individual Townsman could forbid the entrance of the new colonist upon the common fields of the Sept. If, after three warnings had been given and thirty nights had elapsed, the intruder continued contumacious, he was summoned to the "Mallum"[3] or court; and in default of appearance, the "Gravio"[4] proceeded to the spot, and by force expelled the occupant from the purpresture which he had made. But it is important to remark, that the freedom of the community might be legally acquired by an uncontradicted residence; for if the stranger remained in the Township, without challenge, during twelve months, he was from thenceforth allowed to dwell in peace and security, like the other members of the community. The functionary, who in this passage is named the Gravio, and elsewhere called the Tunginus[5], may be compared to the Anglo-Saxon Tungerefa; though at the same time his authority was greater, and more analogous to that possessed by the Mayor or Præpositus of a Borough Town. He is described as the chief executive officer and judge of his district; he called the Courts and summoned the witnesses: his presence afforded a sanction to legal acts; and

Rights of the Townsmen or Inhabitants of a Villa amongst the Salic Franks.

Any one Inhabitant might prohibit the entry of a stranger.

But the liberty of the Township might be gained by twelve months' residence.

The Gravio or Tunginus, the chief municipal officer of the Villa, nearly like the Mayor of a Borough Town.

[a] LL. Henrici I., § 7.

the whole Township submitted to his control and jurisdiction[a]. But a Salic Villa, unlike an Anglo-Saxon Township, was free from the dominion of a Lord. The Anglo-Saxon law always supposes the existence of a territorial Superior, the Salic law never; and when we recollect that the Ceorls, or Villeins, appear in the character of a nation rendered tributary to the Eorls or Nobility, it will not be altogether unreasonable to assume, that, in the jurisdictions of the Townships, we may discover further vestiges of the existence of two distinct communities, respectively constituted by the conquering and conquered races. From the data which are afforded by the Teutonic as well as by the Celtic institutions, we can point out the manner in which the Township, with its jurisdictions and classes of property, might arise from the acquisition of a British Maenawl by an Anglo-Saxon Chieftain[1]. Such a Lord, by appropriating to himself, not only the demesnes of the British King, but also a portion of the common land of the Cenedyl, would, by this act, create the "inland," which we find he possessed. Other portions of the common land, granted to the Sithcund men, already connected with him by the ties, strong, though not indissoluble, of military commendation, would become the "Læna," the feuds, or benefices. Mere occupation of such land, without any express grant from the Lord, would become the foundation of the holding by folkright. And the old implanted habits of the Teutonic nations would unite these tenants into a body, not greatly dissimilar from that which they, or their kinsmen, had formed in their own Cimbric or Saxon territory. Lastly, the ancient cultivators of the land continuing in the possession of their "numbered lands," and with the enjoyment of such portions of the common land as had not been appropriated, would constitute the body of the Ceorls or villeinage. Many circumstances may have existed, which would occasion variations from this general scheme; the continuance of Roman institutions may be sometimes surmised. And, in other instances, the Britons may have been treated so favourably as to be scarcely inferior, in privilege and rank, to their victors; but as a comprehensive hypothesis the foregoing conjectures may be fairly applied to

Anglo-Saxon Townships probably formed from the union of Teutonic and British communities.

"Læna," or benefices, carved out of the common land, by the grants of the Anglo-Saxon King or Lord.

Tenure by folkright created by the occupation of common land without grant.

[a] Lex Salica, à Car. M. emendata, tit. 47, de eo qui villam alienam occupaverit: Pactus Legis Salicæ, tit. de Migrantibus. [The Salic Law, amended by Charlemagne, title 47, concerning the man who has seized the estate of another. The Compact of the Salic Law, title, concerning Intruders.]

Part I. Ch. III.

the main and leading characteristics of these communities. Amongst other grounds for supporting this theory, the nomination of the Gerefa from the villeinage is not the least important. Interest, no less than policy, would suggest the expediency of permitting the members of the vassal community to be governed by a subordinate Ruler selected from their own nation, who was bound to answer on their behalf to the Lord. Analogous modes of government have always subsisted. In the present age, they are generally rendered more apparent by difference of colour or discrepancy of creed. The Cacique[1] of a Mexican village is almost the counterpart of the Gerefa; and, without multiplying similar instances, it is sufficient to allude to the manner in which the Greeks, under the Turkish yoke, are governed by their Primates[2] and Papas[3], the latter having considerable temporal authority, of their own choice and election. And perhaps the constant appearance of the Four Men of the Township, answering on all occasions for the rest of the community, may lead to the supposition that they were originally the representatives of the four Trefs, of which the British Maenawl was composed.

Modern examples of subject or subordinate communities retaining a share of municipal authority.

Complexities of jurisdiction, originally arising from the intermixture of personal and local authority.

The great complexities of that species of jurisdiction known by the name of "Sac and Soc," and the strange divisions and appointments of authority between different Superiors, either individuals or communities, are susceptible of explanation, if we can be brought to think that they resulted, in the first instance, from the intermixture of personal and local authority, of municipal and military law, just as an army is governed at the present day. Offences which are cognizable by the municipal law are punished by the Magistrate of the City in which the Soldier is quartered. A breach of discipline is tried by the Court-martial, without any reference whatever to the domicile of the culprit. The Officer himself may be compelled to put himself upon the country, at the assizes of the Shire, for a trespass or misdemeanor; at the same time that he is equally amenable to the censure of the Commander-in-chief, residing in a distant part of the Kingdom. Assume that the temporary residence of the Soldier is bestowed upon him as a Fief or Dotation; allow these concurrent, and, in some cases, conflicting authorities, to become real, instead of personal, so that, in the language of the conveyancer, they may "run with the land," instead of being annexed to the station of the occupant; and so exact a parallel will be formed to the ancient institutions, that we can hardly be wrong in attributing them to the operation of analogous causes, acting in an age when law was

Instanced in the case of a modern soldier, subjected both to municipal and martial law.

only custom, and when custom rapidly acquired the force of law.

Judicial and Legislative Assemblies of the German tribes.

Tacitus describes the popular assembly in which the powers of government were exercised before the Teutonic tribes were confederated into Kingdoms. The court was held at every full moon, and at every new moon; and in the legal reckoning of the Teutons, they counted by nights, and not by days, because it seemed to them that the darkness was the mother of the dawn. In addition to those stated assemblies, they held others, convened by special summons, if required on any sudden emergency. Yet the suitors seldom attended before the third or essoin day. All came armed to the Council; the German warrior deliberated girt with his sword; and when a resolution had been adopted, the clash and clangor of the weapons borne by the multitude testified their approbation of the acts of the Legislature. The Priests kept order; and after the Chieftain had pronounced his opinion, the other members of the nobility spoke according to their rank and reputation. Affairs of smaller importance were decided by the Nobility alone. In matters of greater moment, all were to be consulted; an ambiguous phrase, in which the historian has been thought to designate a democratic community. But we must not be seduced by the language of liberty; we lose the real sense of the historian, if we interpret his expressions so as to suppose, that the power of the multitude, the commons, was co-ordinate with the authority of the nobility. And if we admit that the power was vested in the Heads of families, we shall probably have given the utmost extension to the right of suffrage. But the power of the plebs was, at all events, confined within narrow limits. No question was brought before the people, until it had been previously discussed and adopted by a select Council, composed only of the nobility; and the influence of the vassals, who surrounded each Chieftain, can have left but little freedom of opinion in the crowd composing the assembly. Criminals were judged in these courts; and here also were elected the Judges, who, if we rightly understand an obscure and perhaps corrupted text, administered justice in the hamlets of the tribe, accompanied by a train of an hundred companions, or "Comites."[a1] Such is the substance of the statement given by the Roman historian, which must be considered only as a general outline of the institutions of the barbarians, derived from report and hearsay, and

Authority of the Teutonic Priesthood and Nobility.

All questions discussed and adopted by the select Council of Nobility before they were propounded to the People.

[a] Germania, c. 11, 12.

adorned by imagination and eloquence. The laws and usages which prevailed amongst the Germans, could not be known to Tacitus in detail; and without departing from the truth, the "Germany" of Tacitus has been described as a species of political romance, in which the description of the manners and institutions of the free barbarian of the Rhine is to be translated into an implied satire upon the degenerate Roman. Vivid and forcible delineations of the general policy of the Germans were required of the author; but we must not expect to find that minute elucidation of the form and practice of the Teutonic Commonwealth which would enable us to apply every passage and every paragraph of his treatise to the customs of later times. Still, after making allowance for the plan of the historian, his descriptions bear a remarkable character of fidelity. As far as they can be interpreted, they are true; and the main features are recognized in all the popular assemblies of the Teutonic race.

The earliest laws of Germany exhibit the open country as composed of Districts, administered as independent jurisdictions beneath the supremacy of the Frankish Sovereigns, and retaining a considerable portion of self-government and liberty. Such a tract was then termed either the "Gau" or "Centena": the first, or Teutonic denomination, was exclusively in use in Westphalia and "Old Saxony"; the latter latinized term principally obtained amongst the Franks and the Alemanni, and the other tribes inhabiting the southern parts of Germany.

The Gau or Centena, the settlement of a German tribe or population.

The best informed of the German antiquaries agree in considering that the "Gauding,"[1] the Court or Assembly of this district, is equivalent to the "Concilium," so emphatically described by Tacitus[a]; and their grounds for this opinion are sufficiently conclusive. Less satisfactory is their supposition that all the free or noble inhabitants exercised the power of judicature. General terms and vague expressions may appear to give a colour to this hypothesis: nor can it be doubted but that all the free resiants were bound to appear at the stated meetings of the tribunal; but the supposition, that all the suitors possessed, on all occasions, an equal and concurrent authority, involves the assumption that a sudden and total change in the Germanic popular constitutions took place during the ninth century; from that period the ancient records of Teutonic legislation speak a clear language, and the capitularies recognize

The Gauding, or Court of the Gau, represents the ancient Concilium.

[a] Eichhorn, Deutsche Staats- und Rechtsgeschichte, vol. i. pp. 46, 229.

the chief powers of judgment as residing in the "Scabini,"[1] or Echevins, who constituted a body, twelve in number, elected by the people, of whom they were the Judges as well as the Representatives, and who enjoyed their office during life or good behaviour[a]. Appointed by, or in behalf of the community, the Echevin was himself subject to the jurisdiction of the royal Tribunals; and if he failed to discharge the duties of his office, he was reduced to a private station, and another was chosen in his stead, by the consent of the people. But here again, the Frankish rulers had assumed a controlling power; the elections of the Echevins took place in the presence of the "Missi," who, in their Eyres or Circuits, appeared as the delegates of the King or Emperor, and exercised that supreme remedial authority which in early times was the peculiar prerogative of Sovereignty. Though the Commission of the Missus imparted the most ample powers of judicature and of punishment, he had not the privilege of confirming the Echevin in his station; and the ratification of the choice of the people was expressly reserved to the Sovereign, to whom the name of the person so elected was to be transmitted or returned. If imperial innovation is to be suspected in these laws, it is in the permanency of the Echevins in their Corporate capacity, and in the confirmation of the individual elections by the Sovereign; and by supposing that the Echevins were originally elected for a definite period, perhaps only for the year, we shall perhaps obtain a more accurate idea of the original nature of their office. Seven Echevins were sufficient for the ordinary purposes of judicature in the Court of the Centena; but the full number of Twelve always appeared in the Supreme Assemblies; no plea could be held without them; yet they could not proceed to

Twelve Scabini, or Echevins, the Judges of the Gau or Centena, and also the Representatives of the People in the General Placita (see below, p. 90), elected by the people; but their election confirmed by the Sovereign.

[a] Caroli Magni Cap. III. A.D. 803, § 3; Cap. I. A.D. 809, § 22. Ludovici Pii Cap. V. A.D. 819, § 14. Lotharii Cap. III. A.D. 824, § 3. Scabinos etiamnum judices urbanos seu ædilitios appellamus, Gallicè, *Eschevins*. Cujus quidem vocis etymon a Teutonico arcessunt viri docti, ex Glossario Theotisco Lipsii *Scepeno*, Judex. Hodie, inquit idem Lipsius, *Scepenen* Scabini dicuntur. Kilianus, *Schepen*, Judex, Senator, Decurio, Juratus, vulgo Scabinus, Du Cange, vol. vi. p. 166. [Even at the present day we call city judges or magistrates Scabini, in French *Échevins*. And learned men derive this word from the Teutonic, in the Teutonic Dictionary of Lipsius, *Scepeno*, a Judge. To-day, says the same Lipsius, *Scepenen* are called Scabini. Kilian, *Schepen*, a Judge, a Senator, a Town Councillor, a Jurat, commonly called a Scabinus.]

Part I. Ch. III.

judgment unless in the presence of the Comes or Graphio, and of the Centgrave, the Magistrates of the community.

According to the forms of administration adopted at Rome and at Constantinople, the "Comites" filled the chief offices of the Imperial Palace, and represented the sacred person of the purpled Cæsar, as the resident Governors of the distant provinces of the Empire. Girt with the sword of war, the Comes also exercised the functions of civil judicature; and the Frankish Kings, who continued the forms of the Roman administration, gave the same title, and assigned nearly the same office to the Teutonic Graf or Graphio, in whom the chief executive authority of the Centena was vested. The Roman population of Gaul was perhaps ruled by Counts of Roman birth. In Germany, the office of the Graphiones, or Duces, as they were sometimes called, was constitutionally appropriated to the ruling families[a], not excluding, however, a power of selection by the Sovereign: and Charlemagne obtained a double title to the obedience of his subjects, by bestowing a delegated authority upon their ancient aristocracy.

Magistrates of the Gau or Centena, the hereditary Graf, Graphio, or Comes (see above, p. 65, note a) nominated from the ruling families,

Deriving his authority from the nomination of the Community, like the Scabini or Echevins, the Centenarius, who in the German language is also called the Centgrave, acted in subordination to the Graphio, though in some respects he possessed a concurrent authority. In his ministerial capacity, the Centgrave summoned the Mallum, which, amongst the Alemanni, was held every week or fortnight, according to the extent of the district. But the Assembly thus convened by the Centenarius was the tribunal of the Count, who was therein enjoined to do justice upon those who transgressed the law; and in which he proclaimed the summons for the military services to be performed by the lieges. Whilst judgment belonged to the Count, the police was entrusted to the Centenarius; the territory was under his command; he was the guardian of the peace, and the chief officer by whom the tranquillity of the Centena was preserved[b]. Suits could also be judged by the Centenarius, and the original extent of his authority is to be estimated by the restrictions which were imposed upon it.

and the Centgrave, elected by the people.

Authority of the Centgrave as Conservator of the Peace, &c.

[a] Lex Bajuvariorum, tit. ii, § 20. [Law of the Bavarians.]

[b] Decretum Childeberti, A.D. 595, §§ 9, 11. [Decree of Childebert.] Decretum Clotharii, A.D. 595, § 1. [Decree of Clothaire.] Capitula excerpta ex lege Longobardorum, A.D. 801, § 30. [Ordinances extracted from the law of the Lombards.]

Thus, Charlemagne does not allow the Centenarius to make any decree concerning freehold land, nor affecting the serfs ascribed to the glebe[a]: still less was he permitted to hold "pleas of the Crown." No man was to be adjudged to death, or to the loss of his liberty, in the court of the Centenarius; such a sentence being especially reserved to the Count, or to the Missus, each of whom, in his degree, was invested with the judicial functions of the Sovereign, and acted by his authority. The object of these regulations can be easily conjectured. They mark the attempts which were successfully made to lessen the authority of the ancient jurisdictions which resulted from the people, and to substitute the royal Courts in their stead. Further inroads were made by the palatine privileges of the prelates and the feudal nobility; and about the eleventh century, the courts of the Centenæ became extinct, and the Echevins of the rural districts disappear; but in the walled towns, their authority continued not only unimpaired, but invested with immunities which ultimately expanded into the aristocratical republics of the free cities of the Empire.

Power of the Centenarius restricted by Charlemagne.

Echevins lose their authority in the rural districts; but preserve their power in the walled towns, of which they become the Magistracy.

Most of the materials from which we collect the history of the Germanic Centena, and the functions of the Echevins, are taken either from the laws of Charlemagne, or from documents subsequent to his reign. As a legislator, he may have reformed the usages of his subjects; as a monarch, he perhaps modified them so as to confirm his authority; and it may, therefore, be objected, that the capitularies of the ninth century can be scarcely admitted as satisfactory evidence of more remote usage. And if they stood alone amongst the monuments of Teutonic legislation, it might be difficult to maintain that the delegation of the powers of judicature to the Echevins, did not arise from the wisdom or the jealousy of the Frankish Emperor, who withdrew these functions from the people. But here our investigations receive a singular assistance from the laws of the Gothic nations, amongst whom no such influence can be suspected, and whose codes exhibit those instances of conformity, which establish the antiquity of the legal constitution of Germany and of England.

Antiquity of the Constitution of the Germanic Centena, as above described, proved by its conformity to the Scandinavian Hard or Hærred.

In Scandinavia, the "Hard," or "Hærred,"[b1] corresponds with

[a] Caroli Magni Capitulare primum, A.D. 810, § 2. [The first Capitular of Charlemagne.] Capitulare tertium, A.D. 812, § 4.

[b] ...Illustris Peringskioldius vertit *Hordas* seu districtus, alludens haud dubie ad vocabulum illud *Hord*, quo Tartarici nominis gentes

Part I. Ch. III.

the Germanic Centena. Some of the Northern lexicographers consider this term as equivalent to the English Hundred, and in Gothland, the district was certainly known as the "Hundari." But Hærred seems more properly to denote association, without any reference to number, and to signify a Host or Tribe[a]. It is scarcely necessary to observe, that the tract upon which the Horde was established had originally belonged to the people in common; but at the period when the Northern laws were established, the unmixed property or dominion of the soil was no longer vested in the State; such property being then confined to that portion of the district which continued to retain the character of "Almenning," or common land. This domain, of which a considerable portion was forest, marsh and moor, embraced a wide extent of country, and all the products which it could yield were taken at the will and pleasure of the Bondes. The woods and the waters, elsewhere the domain of the Sovereign or the Lord, afforded sustenance and sport to the Community. The Germans, before they became known to the Romans, had emerged from their nomadic policy, by allowing the individual to become an annual occupant. The Northmen advanced, at least after the introduction of Christianity, by a more rapid progress; for their laws allowed the Bonde to appropriate a portion of common land in severalty, and to gain a permanent property by cultivation. First, he was to mark out the House-toft[1], or Homestead. Fixed and certain rules are given in the laws for placing the Mere-stones, and setting out the four ways, which defined the boundaries; and, in proportion to the size of this inclosure, the husbandman was allowed to acquire a corresponding quantity of arable and meadow land. "The Toft is

Almenning, or common land of the Hærred.

Appropriation of common land.

cœtus suos appellare ex itinerum scriptoribus notum est. Et quis scit, annon una eademque vox sit, a linguæ suæ incuriosis negligentius tantum pronuntiata? Ihre. [The illustrious Peringskiold translates Hærad by *Hordas* or districts, doubtless alluding to that word *Hord*, by which, according to writers of travels, the nations of the Tartar race are known to call their assemblies. And who knows, whether they are not one and the same word, only pronounced too carelessly by those who take no interest in their own language?] May there not also be some affinity between *Khan* and *Cean* (from whence Ceanfenne and Ceancinnith, p. 57), both designating a Head, Chieftain, or Leader?

[a] It appears to be equivalent to *Herd*; Goth. *Hairda*; A.S. *Heord*; Dan. *Hiord*; Belg. *Herd*. (See Junius.)

Admeasurement of land amongst the Romans. The Fundus considered as an integer, divided into Ounces, like the measure of value; but considered, for public purposes, as an undivided unit.

the mother of the field,"[a] was the ancient proverb by which the appropriation was guided[b]. The admeasurement of the land offers a singular approximation to the customs of ancient Rome. It appears that the Roman "Fundus" was considered as an integer, and, in the technical language of the law, the land could only be divided in the proportions of the current coin. If any portions were alienated, the division was made in Twelfth-parts, or Ounces, corresponding with the monetary numeration. But though this partition was made as between the individuals who held the Ounces of the Fundus, still, for public purposes, such as taxation, it was deemed to be whole and undivided[c]. In Scandinavia and in the Scandinavian colonies of Zetland and of Man, the measurement of land was, as amongst the Romans, the counterpart of the monetary scale. The Toft was the unit, like the Mark or the Ora; and the divisions of the land were made and calculated according to the divisions of the measure of value, whether an imaginary denomination or a real coin. Such a coincidence could scarcely have been accidental; and when we find that the "Landboks" of the Goths of Arezzo and Ravenna in the sixth century and the charters of their descendants for many ages afterwards testify their adoption of the Roman territorial numeration, it can scarcely be supposed but that it was transmitted from the conquerors of Italy to the ruder regions of the North[d]. There are even some indications that the same admeasurement prevailed amongst the Cymri; and the grants to

The mark or Ora of land amongst the Scandinavians, &c. considered as the unit of measure.

Goths in Italy follow the Roman custom of dividing the Fundus into ounces, from whence the custom was probably transmitted to the Goths of the North.

Adopted also by the Cymri.

[a] *Tompt ær ækers modher*, Loccenius, Lexicon Juris Sueo-Gothici, p. 173. [Lexicon of Suio-Gothic Law.]

[b] Stiernhook, de Jure Sveonum, lib. ii. c. 6. [Stiernhook, On Swedish Law.] Landzlagh, Bygninga Balker [Public Law, Section concerning Buildings], c. i.–viii. And the corresponding *Balks* or Books in the other Swedish Custumals.

[c] Varro, de Re Rusticâ, lib. v. c. 1. [Varro, On Agriculture.] Dig. 21, 2; 39, 6; 1, 8. Niebuhr, Römische Geschichte, vol. ii. 393.

[d] Grant from the Church of St. Anastasia at Ravenna, subscribed by several Gothic Priests in the Mœsogothic language and character, A.D. 551. Grant from Gudilaib to the Deacon Alamod, subscribed in the same manner, A.D. 540, Acta Societ. Scient. Ups., vol. iii. p. 1, 31, Ulphilas, ed. Lye, Pref., p. 35. But published much more accurately by Marini, amongst his invaluable Papiri Diplomatici, Nos. 178 and 118. Will of Amelin, Marquis of Mantua, A.D. 948, Muratori, Ant. Medii Ævi, vol. ii. p. 173. Hickes, Gram. Isl., p. 43 Stiernhook, p. 263. Hibbert, Descrip. of the Shetland Islands

Part I. Ch. III.

the ancient Cathedral of Llandaff repeat the language of the Exarchate and of Lombardy. In those parts of the Island which were occupied by the Romans, no doubt can be entertained but that their laws of immovable property were fully established. When the fields around Camulodunum, or Deva, were allotted to the Soldiers of the Legions, the same course was followed which had guided the Agrimensor[1] in the assignment of the colonies of Transalpine Gaul or Africa. And it is, therefore, not altogether improbable that the principle of a several and separate possession of land was first imparted to the Britons from the jurisprudence of the Empire.

Land reclaimed from the Almenning becomes a "By," i.e. a Manor or Settlement. (See above, p. 51.)

Reclaimed from the waste, the land appropriated from the common domain of the Hærred, became a Settlement or Manor, and was thenceforth held by the Bonde, who, by his labour, had acquired a right to the produce of the soil. But, as yet, he was only a tenant; an acknowledgment was rendered for the land, of which he had only the usufruct; the fee was still vested in the Community: and although no longer open to the other inhabitants, it continued under the jurisdiction of the Hærred, a jurisdiction which, however, was not exercised by the body at large, but by the Næmda[2], a court or tribunal of Twelve men, in whom the power of the Community was vested. If the tenant was poor or idle, and suffered his holding to lie waste, then it was seized by the representatives of the Hærred, and granted out again to a more industrious occupant, just as a forfeiture is incurred by the English copyholder, when buildings are allowed to fall into decay. The Bonde could make no alienation of his customary land, nor could it be considered as his own until it acquired the character of "Odal" or Allodial[3] land, when an absolute property was obtained. Land became allodial, if one family had enjoyed it in undisturbed possession during the term of sixty years. Transmitted through three lineal ancestors, the land also became allodial upon its descending to the heir in the fourth degree[a]: a custom which, however singular it may appear,

Appropriated land subject to the jurisdiction of the Hærred.

Forfeited by the tenant if allowed to lie waste.

Fee simple or dominion of land thus appropriated, vested in the community, the Bonde having only the usufruct until it became Odal-land; i.e. allodial or inheritable.

p. 178. Torfæus, Rerum Orcad. Hist., p. 169. Charter of Thomas Lord Stanley, Earl of Derby and King of Man, 1555, Monasticon, vol. i. p. 718.

[a] *Kenton.* This manor hath a custom, that if the issue of any of the tenants hold their tenements, the one after the other, three descents, they claim the inheritance of the tenement, Risdon, Devon., p. 116.

has its counterpart in an English manor[a]. And the gift of the King had equally the effect of investing the land included in the grant with the privileges of allodiality[b].

Hærredzthing, or Court of the Hærred.

To the Hærredzthing, or Court of the Hærred, all the Bondes owed suit and service, and in Norway the assembly appears to have been very numerous. According to the Swedish laws, it was sufficient if Six suitors appeared from every quarter[c], amongst whom were selected the Twelve men—the Næmda,—by whose verdict or judgment, for the law and the fact were not always kept distinct, all causes and trials were decided; but these appear to be a distinct body from the Hærred's Næmda, by whom all the territorial administration was exercised; highways and bridges were repaired pursuant to their ordinances, and the whole of the Almenning was subjected to their control. The mode of nominating the Twelve men who exercised the powers of territorial jurisdiction in the earlier periods, is not decisively ascertained; whether they served in turn, or whether they were chosen by an election at large, does not appear; nor do the laws state the period during which the individual continued to hold the office. The Næmda, in civil cases, was chosen for each cause, like the English Jury; but the territorial Næmda seems to be spoken of as a more permanent Court; and on every occasion, the Twelve Bondes act in the name, and discharge the powers belonging to the community.

Næmda, or Twelve men, corresponding to the Teutonic Echevins, and in whom the powers of judicature were vested.

Anglo-Saxon Hundred.

Let us now consider the English Hundred, which, though perhaps not so unmixed in its nature as the Scandinavian Hærred or the German Centena, still offers the most material features of the same organization. An Hundred hides of land, an Hundred free families, an Hundred tithings—of which more hereafter—or an Hundred freemen, have all been assumed as the basis of the calculation, from whence it derived its well-known name. The British Cantred, with its hundred Trefs, has also been assumed as the origin of the district: and it is worthy of remark, that each of the six Sheddings[1] or Hundreds of the Isle of Man, contained exactly one hundred tenant-holdings—for the fee simple of the

Opinions as to its component parts.

[a] See Grants made to the Church of Llandaff by Cinvyn, Gurcant, Rodric, &c. published by Dugdale, from the Liber Landavensis, Monasticon, vol. iii. pp. 197–200.

[b] Laws of King Magnus of Norway, Magnus Konungs Laga-bætters Gulathings-laug. Landabrigdi, c. 2. [The Law made at Gula of King Magnus, the Law-amender. Escheatage of Land.]

[c] Stiernhook, p. 33.

Part I. Ch. III.

Island belonged entirely to the Lord—within the period of legal memory. It has been urged, however, and with some plausibility, that the Centenary Council mentioned by Tacitus, may have bestowed such a denomination upon the jurisdiction in which it existed. Every one of these etymologies is, however, liable to objections: and the alterations which have taken place in the territorial boundaries since the Conquest are such as to baffle any theory founded upon the present state of the country. In East Anglia there existed a duodenary division, the Hundred being distributed into Twelve Leets or Tribes, that is to say, into Four head Leets, each containing three subordinate Leets. It may be here remarked, that, according to the Gothic arithmetic, the hundred consisted of six score, and Ten was equivalent to Twelve[a]; and this mode of reckoning appears to have occasioned some numerical obscurities. North of Trent, the Hundred bore the name of Wapentake. This denomination is traditionally supposed to have arisen from the custom observed on the installation of the Ealdorman[b]. Dismounting from his horse, he erected his spear in the field, and the suitors assembling around him, touched his

Division of the East Anglian Hundreds into Twelve Leets or Tribes, viz. Four head Leets or Tribes (see below, p. 82, note a) each containing three subordinate Leets.

Gothic or long hundred consists of six score.

The Wapentake, equivalent to the Hundred; said to be so called from the ceremony observed at the installation of the Ealdorman, when the suitors touched his spear or weapon.

[a] *Hundrade*...usurpatur pro numero CXX. Scilicet observandum, veteres tam per decadas quam duodecadas numerasse, atque ad centenarium pervenientes, illum *lill hundrad*, vel *hundrad tiræd*; alterum vero, seu CXX, *storhundrade*, vel *Hundrad tolfræd* appellasse. Similiter *lilla tusend* mille erat, sed *stortusend* aut *tusend tolfræd*, erat MCC., Ihre. [*Hundrade* is used to denote 120. For it should be observed that the ancients reckoned both by tens and twelves, and when they reached the hundred called the former the *short* or *decimal hundred*, and the latter, or 120, *long* or *duodecimal hundred*. Likewise the *short thousand* was a thousand, but the *long* or *duodecimal thousand* was 1200.] Notetur etiam Norvegis et Islandis peculiarem numerandi rationem in usu esse per additionem vocum *tolfrædr*, *tolfræd* vel *tolfræt*, quæ decem significare faciunt duodecim....Causa istius computationis hæc est, quod apud istas gentes duplex est decas, nempe minor, cæteris nationibus communis, decem continens unitates; et major, continens duodecim, id est *tolf* unitates, Hickes, Gram. Isl., p. 43. [It is also to be noted that the Norwegians and Icelanders made use of a peculiar fashion of numbering by the addition of the words *tolfrædr*, *tolfræd* or *tolfræt*, which make ten signify twelve.... The reason for this computation is that among these races the decade is twofold, the lesser, shared with other nations, containing ten units, and the greater containing twelve, that is, *tolf* units.]

[b] LL. Edwardi Confessoris, § 32.

weapon with their own, as a sign of fidelity and obedience. The ceremony of "raising the King's protection" between two contending Anglo-Saxon lineages, was performed in the same manner; the Northmen equally testified their assent to the judgments of the "Landthing," by the touch of the weapon[a]: and there are indications that the same token of fidelity was the sanction of many civil contracts.

Analogous custom observed in the Landthing of the Norwegians.

The Hundred Court, held every month, was composed of all the Thanes and Landlords whose demesnes were included within its boundaries[b]. The representatives of the Township, the Four Men and the Reeve, have been already noticed; and, according to the customary law of some parts of England, they seem to have attended according to a settled order and rotation, each homestead sending its deputy in its turn[c]. The Bishop of the Diocese in which the Hundred was situated, was an important member of the assembly, but the presiding magistrate was the Ealdorman. The general application of this title to any dignitary, leaves us in some doubt with respect to the nature of his qualification. Aylwin, the Ealdorman of East Anglia, and who enjoyed a power approaching to royalty, appears as the administrator of justice in the Hundreds of Cambridge[d]. Other passages indicate that each Hundred possessed its peculiar Ealdorman; and the Anglo-Saxon customs preserved in the municipal organization of the English Burghs, afford a strong presumption that such a custom may have prevailed. An Ealdorman of this description may have been either territorial, exercising his power as Lord or owner of the Soke or jurisdiction, or elective. I do not wish to heap conjecture upon conjecture when discussing subjects of which so little can ever be known with certainty; but the authority of an Aylwin can be reconciled with the existence of the Hundred-Ealdorman, such as is noticed by Edgar[e], by supposing that the first, the Ealdorman of the Nation, made his circuit, and dispensed justice in a Judicial Eyre, like the Frankish Missus, or the Anglo-Saxon

Hundred Court, how held. Thanes and Landlords, the Four Men, the Reeve, and the Priest of every Township.

The Bishop.

The Ealdorman.

Aylwin, Ealdorman of East Anglia, presides in the Hundreds of Cambridge (about 980)

[a] This ceremony was termed "*at eiga Vapnatak at domum*" [to use weapon-grasping in giving judgment]. Laws of King Magnus. Thingfarar Bolk, cap. 4. [Section of Laws concerning Parliament.] Arnesen, Islandske Rettergang, p. 584. [Icelandic Procedure.]

[b] LL. Henrici I., § 7.

[c] See Statement of the Custom of Clacklose Hundred (Norfolk), Brady, Introduction, Glossary, p. 59.

[d] Hist. Eliensis, 478. [e] Edgar, III. §§ 8, 15.

Part I. Ch. III.

King; and that the second was a local Magistrate, nearly allied to the Centgrave, perhaps the same who was also called the Hundred-Gerefa, and who, in addition to the superintendence of the Hundred, was the fiscal officer of the King, and attended to the preservation of his rights and interests, at least, in the later periods of the Anglo-Saxon monarchy. The receipt of the fines and forfeitures which fell to the share of the Sovereign, was probably entrusted to this officer. Notwithstanding the claims of the King and the Lord, the Hundred was also entitled to a part, and sometimes to the whole of these amerciaments; and though it is evident that the Anglo-Saxon Communities were yielding both to royal authority and seignorial power, yet even Tacitus informs us, that the "wites" were payable to the Sovereign, or to the "Civitas" or Commonwealth[a]. Modern corporations, when they receive the penalties imposed upon offenders, succeed to this ancient Teutonic privilege of the Hundred, which, in a barbarous age, must frequently have perverted the course of justice, by giving the persons, through whom the law is carried into effect, a direct interest against the individual under accusation: nor can the present existence of such a right be defended on any principles of sound policy. The language employed by the Anglo-Saxon laws, and in some of the narratives of proceedings in the Folkmoot, might occasionally lead us to suppose that the jurisdiction was vested in the body of the assembly, or in the suitors at large; but whatever powers were given to the Court, they seem to have been usually exercised by a select body, which, according to a common figure of speech, assumed the name of the larger community which it represented. Twelve chief Thanes were thus chosen in every Wapentake, by whose oath the crimes committed within the district were to be made known, or, as we should say, presented[b]; and who bear a resemblance to the members of the Gothic Næmda, as well as to the Frankish Echevins. And the twelve "Lahmen," six Britons and six Englishmen, appointed to administer equal justice between the British and English inhabitants of Damnonia, may be considered as the same Tribunal[c]. In East Anglia, pleas were decided by the "Judges" of the Hundred, Twelve, Twenty-four, or Thirty-six, who, on some occasions, were chosen by the consent of the parties, perhaps from amongst a

The Gerefa or Præpositus (afterwards the Bailiff) of the Hundred.

Fines and Forfeitures partly belonging to the Hundred.

Rights of modern Corporations to Fines, derived from the ancient right of Hundreds.

Jurisdiction vested in select bodies.

Twelve chief Thanes named in every Wapentake, to present crimes and misdemeanors. [See Part II., p. 163.]

Twelve Lahmen, six English and six Britons, named to administer justice in Damnonia or Devonshire (and perhaps Cornwall).

Judges of the Hundred in East Anglia, Twelve, Twenty-four, or Thirty-six.

[a] Tacitus, Germania, c. 12. Edgar, II. § 7; III. § 8. Canute, II. § 23. Domesday, Norf., vol. ii. p. 130.

[b] Ethelred, II. § 8.

[c] Devonian Compact[1], § 3.

greater number, bound to discharge that duty by tenure[a], like those who, in the County of Chester, were called "Judicatores," and who are always distinguished from the suitors.

But, at the same time that these select bodies appear most frequently as the dispensers of the law, still all the proceedings are not according to the same form; nor is it possible to digest the few notices of the conventions of the ancient Hundred court into a regular system. England was not colonized at one period, not peopled by one race. The various local customs yet recognized by the law, after the state has been so long united, are only faint tokens of the diversities which must have subsisted when every Kingdom of the so-called Heptarchy, was in itself only an irregular combination of minor principalities; nor is it less likely that the mode of exercising the jurisdiction may have differed with the subject which called forth its authority.

Mode of administering justice not uniform in different parts of England.

The Hundred was a court of voluntary as well as of contentious jurisdiction. All transactions by which property could be acquired, or by which right could be transferred, took place in the assemblies of the people: some few cases only were excepted, where an equal degree of authentic publicity could be given by other means. Contracts for the purchase of lands were made in the Folkmoot; there the money was paid in the presence of the Hundredors, who, if required, afterwards bore testimony to the fact in the Shire; and there the Charter or Landboc was read and published. In exercising these various offices, the constitution of the Hundred court may have necessarily varied. An Assembly, convened for military purposes, or a Court composed of the Thanes or military tenants, with the intent of civil judicature, may have differed from the Criminal Tribunal; but the continued and unbroken succession of analogous customs and documentary evidence, leads the inquirer to the conclusion, that, according to the regular constitution of the Hundred, the power of jurisdiction in its highest branches, in criminal jurisprudence and in legislative proceedings, was vested in the select bodies, the depositaries of the authority of the community. In the Shires or Kingdoms of Sussex and Kent, the divisions called Hundreds were much smaller, and consequently much more numerous, than in any other part of the Anglo-Saxon territory. Sussex was composed of Rapes, but the Hundreds retained their proper jurisdiction: in Kent they were Hundreds only in name, the

Twofold jurisdiction of the Hundred, voluntary and contentious.

Grants of land made or promulgated in the Hundred Court.

Hundreds of Sussex and Kent much smaller than in other parts of England, and destitute of jurisdiction, which, in those Kingdoms, was exercised in the

[a] Hist. Ramesiensis, p. 415. Hist. Eliensis, pp. 471, 478.

Part I. Ch. III.

Rape, and in the Lest or Lathe.

jurisdiction being exercised in the Lest or Lathe[a]. All the powers of judicature, elsewhere appropriated to the Hundred, belonged to these Municipalities. The government of the Lathe of Romney, with some changes, has been perpetuated to the present day; and in the ancient Jury of Twenty-four, whose presentments, confirmed by the Lords of Fees, and the Reeves or Præpositi of such as were absent, became the laws by which it is governed, we may discover the Thanes of the Saxon Age[b].

Lathe of Romney governed by a Jury of Twenty-four, who, by their presentments, make the laws or ordinances of the Lathe.

Anglo-Saxon Burghs to be considered as Hundreds[1].

More complete, and more satisfactory, is the elucidation which the Anglo-Saxon Hundred receives from the history of the English Boroughs. At present I will not enter upon the much-debated question respecting the antiquity of municipal franchises, a question which is not always discussed without some political bias or tendency. It must, however, be clearly understood, that a Saxon

[a] *Lesta*, *Lath*, *Leth*, and *Leet*, are but one word, and which was sometimes used as equivalent to an Hundred. Brinklow Hundred was also called "Leta de Brinkelow," Dugdale, Warwickshire, p. 2. According to some, from the Anglo-Saxon "*Gelathian*," to assemble (Intr. Domesday, p. 54); a verb of which the root is found in "*Leod*," people; S.G. *Lyd*; in the ancient and modern German, *Liuti* and *Leute*. The cognate term exists in the ancient British, *Lluodd*, a throng or multitude; *Lluad*, a thronging together, a flocking. In its original signification, therefore, *Leet* is equivalent to *Hærred*, both merely implying a Tribe or an assembly of the people. "*Hreppar* " means district in Ireland to this day, and it is not improbable but " that the *Rapes* of Sussex were military districts for the supply of " the castles which existed in each," Intr. Domesday.

[b] Carta Henrici Regis pro hominibus Marisci de Romenhale, 2 Sep. a. r. 3°. Lastum Mariscorum de Romenhale apud Shergate die Sabbati post Purif. A.D. 1287, a. r. Regis Ed. fil. Regis Henrici 16°, MS. Cott. Cleopatra C vii, ff. 36, 37. [Charter of King Henry for the men of Romney Marsh, dated 2nd September in the 3rd year of his reign. The lathe of Romney Marsh at Snargate on the Saturday after the feast of the Purification A.D. 1287, in the 16th year of the reign of King Edward, son of King Henry.] Ordinatio Dominorum Johannis de Lovetot et Henrici de Apuldrefeld, Justiciariorum Domini Regis de omnibus Mariscis de Romenele, &c. facta apud Romenele 5° die Decembris, anno regni Regis Edwardi fil. Henrici 16°, MS. Cott. Galba E iv, f. 149. [The Ordinance of Lords John of Lovetot and Henry of Appledorefield, the Justices of our Lord the King for all the Marshes of Romney, made at Romney on the 5th day of December in the 16th year of the reign of King Edward, son of Henry.]

Burgh was nothing more than an Hundred, or an assemblage of Hundreds, surrounded by a moat, a stockade, or a wall; and the name of the Hundred was actually given to some of the most considerable cities, burghs and towns of England[a]. No right was conferred or destroyed by the feeble fortification which protected the Burgenses; and the jurisdiction of the Burghmoot or Portmoot differed from that possessed by the analogous districts in the open country, only in consequence of the police required by a more condensed population, and the institutions, perhaps of Roman origin, which incorporated the trading portions of the community: all of which were extraneous to the primitive territorial jurisdiction of the Burgh, and in no respect affecting its constitutional existence or nature.

Burghmoot or Portmoot, equivalent to the Hundred Court.

In comparing the institutions of the Northmen with those of the Anglo-Saxons, there is one very striking dissimilarity. The Manor of Scandinavia appears as the undignified settlement of the cultivator; the owner is invested with no other authority, beyond the domestic government belonging to the master of the family; and it is in the Næmda of the Hærred that we discover the prototype of the Courts of the Township. On the contrary, the Anglo-Saxon Town is in itself a Seignory, constituting a distinct jurisdiction, in subordination to the Wapentake, or to the Hundred, the larger community; but which possesses no territorial authority within the bounds of the smaller district. In the Scandinavian and Anglo-Saxon forms of policy, however, we may distinguish the same principles of government, varying in their application, and yielding to those accidental circumstances which have so great an influence upon all the affairs of human kind. Scandinavia, when the Ases first approached its shores, was a pathless wild. The wandering Finns, whom the traditions of after-times represent as malignant Imps and deformed Demons, were the sole inhabitants, who lurked in the recesses of the rocks and the shades of the forests, and shrank from the power of the

The "By" or Manor of Scandinavia, originally the agricultural location of the husbandman, without any political existence.

[a] *Norwich*, Domesday, vol. ii. p. 115. *Thetford*, Domes., vol. ii. p. 119. *Chelmsford*, Domes., vol. ii. p. 25. *Maldon*, Domes., vol. ii. p. 3. *Colchester*, Domes., vol. ii. pp. 105, 107. *Winchelsea*, Town Register, MS. Cott. Julius B iv (see Part II., *Proofs and Illustrations*, p. 162). *Canterbury*, Domes., vol. i. p. 5; and see also Somner, Canterbury, p. 96. *Feversham*, Domes., vol. i. p. 5. *Fordwich*, Domes., vol. i. p. 12; Charter of Edward the Confessor. *Exeter*, Charter of Manumission of Brightmar of Holcombe. Hickes, Dissert. Epist., p. 14.

Part I. Ch. III.

invaders. Such as escaped the sword took refuge beyond the Polar Circle in the desolate realms which are now peopled by their posterity. The Ases, as they dispersed themselves, had no mastery to gain, except over nature; the Horde took an undivided possession of the tract which afterwards constituted the Hærred; and when each Bonde raised his dwelling and appropriated his fields, the supreme authority remained unbroken in the community. But the Anglo-Saxons did not become the occupants of a desert; they entered a fully-peopled island. Subjects, if not slaves, passed under the dominion of each Warrior; and the Chieftains and their followers, in establishing their power, brought with them such portions of the general authorities of the State as were necessary for government and protection. The Township was the first colony of the Saxons in Britain, the court by which it was regulated was deduced from that of the Tribe; whilst, at the same time, it was governed by a Chieftain and engrafted upon another Community, which retained a distinct political existence. We may thus view the same species of society under three different modifications. In the primeval State, whether it be the German Centena, or the Salic Villa, the body politic owned all the soil, and possessed an undivided jurisdiction over the soil and over the people. The Hærred retained the undivided jurisdiction, but invested the individual with a right of property in the land. Lastly, the founders of the Hundred, at the same time that they asserted the judicial supremacy of the state, imparted such a proportion both of territorial jurisdiction and territorial right, to the dependent corporations, the smaller swarms of the parent hive, that they became, in fact, what we have described them to be, the primary elements of the community.

The Anglo-Saxon Township a species of colony established by a Chieftain, with a jurisdiction derived or deduced from a larger state.

Federative Governments amongst the Greeks and Etruscans.

Congresses for the general administration of government were formed at a very early period; and, though it would be difficult to prove any direct transmission from the polished nations of classical antiquity, the federations of the Pelasgic[1] nations offer some singular approximations both to the spirit and the form of the policy prevailing amongst the more modern Teutons. The origin of the Amphictyonic League[2] ascends to the Heroic age, and the historians of Greece doubted whether to attribute the institution to Acrisius, King of Argos, or to the son of Deucalion. Had the primitive laws retained their vigour, the wisdom of the Amphictyonic Council would have prevented all wars amongst the kindred nations subject to the common authority of the sacred Tribunal. Religion was the basis of the compact; but the

Amphictyonic League;

its foundation by Acrisius or Amphictyon;

Judges had the power of enforcing the decrees of the Council by fines, or even by military execution. Twelve States composed the original League, each of which sent an elected Judge as representative[a], who was styled the Pylagoras[1] or Amphictyon. Afterwards, an additional representative was sent by every State; but the title of Hieromnemon indicates that he was principally charged to superintend the concerns of religion. In process of time, many other confederates were incorporated in the League; but, notwithstanding the increase of members, the union was still deemed to be composed of Twelve Tribes or nations; the representatives, however numerous, of the cities included in a Tribe, possessing only a collective voice or vote, and not an individual suffrage[b].

composed originally of Twelve States.

Amphictyonic Council, in which each State appeared by its elected Judges and Representatives.

Continues to be composed of Twelve Tribes, notwithstanding the increase of members, the Cities included in a Tribe possessing a collective vote.

In imitation, perhaps, of the Amphictyonic Council, was formed the Pan-Ionian Synod[2]. Twelve cities were peopled in Asia Minor by the association of the Ionic tribes, under the sons of Codrus. Androclus[3], the founder of Ephesus, is said to have possessed an authority which extended over the other Settlements, and Ephesus always retained the Primacy, and directed the League: but each State enjoyed its own municipal administration, together with the rights of Sovereignty, subject only to the political supremacy of the Pan-Ionian Assembly[c].

The Pan-Ionian Synod composed of the Twelve Cities or States founded in Asia Minor by the sons of Codrus.

The affairs of the Tyrrhenian Commonwealth, consisting of Twelve Governments, were administered by a Senate, perhaps formed of the Twelve Kings or Principes, by whom each State was ruled. All the political relations of Etruria depended upon the deliberations of this Council; nor could any one city of the League conclude a peace without the assent of the federation. When war was declared, one of the Twelve Kings was chosen as the leader of the Confederacy. Amongst the tokens of royalty was the battle-axe, borne, together with the fasces, before the

The Twelve associated Cities of Etruria.

One of the Twelve Kings of the Etrurian Cities elected as the Imperator or military leader of the Confederacy.

[a] Ἀμφικτύονες· οἱ ἐκ πόλεων καὶ ἐθνῶν αἱρετοὶ δικασταί, Suidas. [Amphictyones, those who are chosen as judges from the cities and nations.]

[b] Strabo, lib. ix. Pausanias, lib. x. c. 1. Æschines, de Coronâ. Plut., Parall. Plut. in Themist. de Legat. Hesychius. Harpocration. Suidas. See also Mitford, Greece, chap. 3. § 3; chap. 27. § 1. Potter, Antiquities. Prideaux on the Oxford Marbles. Leland, Life of Philip, pref. St. Croix, Des Gouvernemens Fédéraux de la Grèce. Barthélemy, Voyage de la Grèce, vol. iii. p. 53.

[c] Strabo, lib. xiv. Pausanias, lib. vii. c. 3. Herodotus, lib. i. c. 143–148.

Part I. Ch. III.

Sovereign; the temporary elevation of the War-King was accompanied by the surrender of the insignia of his compeers, and the Twelve battle-axes of the associated Commonwealth denoted the supremacy of the elected Commander[a].

Attica first settled by Twelve States or municipal jurisdictions.

Attica, under Cecrops, exhibited a State considered as a united population, yet containing Twelve distinct States or municipal jurisdictions, which were incorporated into the Commonwealth of Athens by the policy of Theseus[b]: and this federative organization appears to have been deeply implanted amongst the nations of the Pelasgic race; for the Twelve Princes who shared the Sovereignty of the Phæacians, beneath the supremacy of Alcinous, present the aspect of a state formed by a similar union of Twelve dependent Lordships[c].

Twelve Principalities of the Phæacians.

In the last age, every chronicler of a European kingdom endeavoured to dignify the annals of his countrymen by deducing their origin and history, not only from the periods when the favoured nations of classical antiquity flourished in youthful vigour, but even from the genealogies of the primitive population of the world recorded in Holy Writ. Overloaded with uncouth learning, such disquisitions were too often intended as the vehicle of pedantic and awkward flattery offered to the prince, or as a vulgar tribute to the national vanity of the patron; and the wild theories, the indiscriminate use of materials and the inaccurate statements of facts with which they abound may have contributed to create a distaste towards any investigations, conducted, however temperately, upon those principles which lead the inquirer to dwell upon the primeval affinities of mankind. Yet it may be doubted whether the most extravagant asserter of Milesian antiquity[1] has marked out a path which will lead him so far from mere historical truth as that which is chosen by the philosophical critic, who, denying the records which, in his opinion, are consecrated by an imaginary creed, and equally rejecting the facts of the Pentateuch, and the promises of the Gospel, is willing to

[a] Dionysius Halicarn., Ant. Rom., lib. iii. c. 61; lib. vi. c. 75; lib. ix. c. 18.

[b] Strabo, lib. ix. Attica. Plut., Theseus.

[c] Δώδεκα γὰρ κατὰ δῆμον ἀριπρεπέες βασιλῆες
Ἀρχοὶ κραίνουσι, τρισκαιδέκατος δ' ἐγὼ αὐτός.
Odyss., lib. viii. v. 390.

Twelve Princes in our Realm dominion share,
O'er whom supreme, imperial power I bear.
Pope.

believe, on his part, that the different races of men are all equally aboriginal, fortuitously evolved from their parent earth in their respective climes, and not sprung from any common parent, or embraced by any common dispensation[a]. I have therefore collected materials for consideration, leaving it to others to investigate whether the coincidences, to which I have here alluded, prove any connexion between the Pelasgic nations and the Teutonic tribes, amongst whom many resemblances of such policy reappear.

The earliest authentic example of the federative policy which united a Barbaric nation, is afforded by the state which the Tectosages[1], the Trocmi, and the Tolistobogii, founded in the heart of Asia Minor. Led on by Brennus[2], when advancing towards the sacred groves of Delphi, a dissension which arose in the host induced Leonorius and Lutarius, the Kings of these Galatians, whose original seat appears to have been between the Pyreneans and the Cevennes, to diverge into Thrace, where they founded the Kingdom of Thule. After many vicissitudes of fortune, they crossed the Hellespont. Their defeat, by Attalus of Pergamus, compelled them to withdraw from the sea-coast, and to establish themselves in the extensive and opulent territory dismembered from Bithynia, Phrygia, and Cappadocia, afterwards known by the name of Gallo-Græcia. Speaking the same language, and constituting but one State, each Tribe was divided into four Tetrarchies, respectively governed by their Tetrarchs, making Twelve Tetrarchs in the whole. Beneath the Tetrarch was a Dikastes or Judge, and Three military commanders. A Council of Three hundred, whose usual place of assembly was at Drynæmetum, possessed a judicial power in cases of bloodshed; the other branches of authority belonged to the Twelve Tetrarchs and Twelve Judges of the community[b].

The Tectosages, Trocmi, and Tolistobogii, part of the army of Brennus, originally seated in Gallia Narbonnensis, found the kingdom of Thule in Thrace, and afterwards settle in Bithynia, Phrygia, and Cappadocia, where they establish the Twelve Tetrarchies of Gallo-Græcia, before Christ, 241.

Each of the Three Tribes divided into Four Tetrarchies.

The Galatian State governed by Twelve Tetrarchs, Twelve Judges or Δικασταί, and Thirty-six Military Commanders.

This Commonwealth, like every Republic of the same character, ended in Monarchy; for there appears to be a natural gravitation, either to the splendour or the convenience of government administered in the name of one sole Ruler. Deiotarus became the King of the Galatian Tetrarchies, which ultimately submitted

[a] Niebuhr, Römische Geschichte, vol. ii. p. 251, &c.

[b] Liv., lib. xxviii. cc. 16, 17. Strabo, lib. iv., lib. xii. Plin., Hist. Nat., lib. v. c. 32. Appianus, Syriaca. Suidas, s.v. Γαλάται. Memnon apud Photium, c. xx. Polybius, lib. iv. c. 18. Pausanias, lib. x. c. 19. Justin., lib. xxiv. c. 4.

Part I. Ch. III.

to the Romans, retaining, as it is thought, some portions of their ancient municipal policy; and their language continued to be spoken until the age of St. Jerome: though the Apostolic Epistle addressed to them has been adduced as a proof that they were also familiarly acquainted with the Greek tongue[a1].

Whether these Gauls are really to be considered as Celts or Teutons is a question of some difficulty. The region from whence they emigrated, is within the Celtic boundary; but the inferences to be drawn from the names of the leaders, might incline us to the supposition that they belonged to the Teutonic race[b]; and we also have the authority of St. Jerome in asserting, that their language was that of the Treviri, who were certainly Belgians. A branch of the Tectosages, whom Cæsar deduces from Gaul, had long before his time conquered a domicile near the Hercynian forest[2], so that they may possibly have been a mixed nation[c], and the allies of Brennus may have been drafted from beyond the Rhine: but their origin is of far less importance than the facts disclosed by their history.

Hitherto, the Teutonic Settlements in Europe have been considered as isolated and independent jurisdictions; and in the period when the Germans first became known to us, no national government was then subsisting amongst them. Cæsar describes these nations as being destitute of any common jurisdiction, which could control the Magistracy of the Centena[d], or which could assist its powers, in case of litigations between individuals belonging to different jurisdictions, and which, for want of such supreme authority, must have assumed the character of a deadly feud, to be ended only in the field. The necessity of submission

Teutonic Nations destitute of any common jurisdiction in the time of Cæsar;

[a] Gillies, History of the World, vol. i. p. 592.

[b] The names of *Leonorius* and *Lutarius* have been variously written; *Lonnorius*, *Lonorius*, Λεονοριος and Λεωννοριος,—Λουτουρια, Λωθαριος and Λευθαρις. The first, according to the conjecture of Gronovius, is *Leonhard*; and the second, *Lothar* or *Luder*. *Brennus*, by the Celtic antiquaries, has been supposed to be the title of the leader, the Cymric *Brennin*, *King*; though the Germans, on their part, maintain that the word is not a title, but an epithet derived from *Brennen*, to *bren* or *burn*, and expressive of the devastations of the Chieftain. And it might be suspected, that the appellation of *Belgius*, or Βολγιος, given to the companion of Brennus, was not a proper name, but merely the adjective denoting his race or nation.

[c] Cæsar, de Bello Gallico, lib. vi. c. 24.

[d] De Bello Gallico, lib. vi. c. 23.

to the milder authority of the law would be felt long before it would be acknowledged. Inconsiderable as a clan may be, it has the pride and the attributes and the feelings of a nation. The privilege of wrong-doing with impunity is the last right of which either nations or individuals can be prevailed upon to divest themselves. Embellished by the well-sounding epithets of national dignity and independence, many acts are praised in a polished community, which excite far different feelings when viewed in the guise of a fray or foray: the conscience which justifies the reprisals of the subjects of Bourbon and Nassau, ought to excuse the spoilings of an Armstrong or a Macgregor. Eskdale and Liddesdale resisted the supremacy of the law as an affront or an injury; and the politicians of the Marcomanni[1] or the Quadi[2], would have smiled at the visionary project of establishing any tribunal by which the disputes of either bank of the rivulet could be settled, without unfurling the banner and unsheathing the sword. Yet, although no civil judicature was subsisting amongst the nations of the Trans-Rhenane Germans in the first century before the Christian era, confederations for military purposes were formed with no inconsiderable portion of political skill. Such was the association of the Suevi, composed of one hundred Pagi, each of which furnished a thousand warriors[a]; and, in consequence of such military unions, the Teutonic Tribes, whilst war prevailed, submitted to one magistrate, having the power of life and death, the monarch of the community. This dignity, confined to the ruling families, was elective and temporary. Amongst the Old Saxons, one of their Ealdormen, who, according to the traditions of the country, were Twelve in number, was chosen by lot, as the War-King, his office ceasing with the necessity from which it had arisen[b]. Military command must always be accompanied by a certain degree of authority, administered according to the spirit, if not to the forms, of municipal government; and, whilst the Old Saxons fought under the supremacy of their elected Imperator, he might be enabled to cause justice to be dispensed between different Tribes of the armed nation. Therefore, it was not without reason that the Anglo-Saxons, in their significant language, whose

but accustomed to form Confederations for political purposes.

War-Kings elective, whose authority was temporary, chosen from amongst the Twelve Ealdormen of the Old, or Continental, Saxons.

[a] De Bello Gallico, lib. iv. c. 1.

[b] Bede, Hist. Eccl., lib. v. c. 10. Botho, Chron. Picturatum apud Leibnitz, SS. Rerum Brunswicensium, vol. iii. p. 292. [Conrad Bote, Picture-Chronicle, printed in Leibnitz, Writers of the History of Brunswick.]

Part I. Ch. III.

terms so frequently display a singular degree of philosophical refinement, gave the same name both to the helmet and the crown. The allegiance required by the General gradually became the fealty due to the Sovereign. Monarchy is founded upon military power; and the sword is always joined to the sceptre amongst the ornaments of royalty. Peace, however, deprived them of their common magistracy, and the cessation of external hostilities was the commencement of internal disunion: but they possessed within themselves the means of amelioration; and their peculiar policy, perhaps the wreck or reminiscence of a more perfect system, from which they had degenerated during their wanderings, afforded the groundwork of the general government of the community.

The Parliaments, &c. of the Middle Ages to be considered as the simultaneous meeting of different Courts and Councils, the armed Council,

One of the Supreme Councils of every ancient Kingdom was an armed Council of the Aristocracy, girt with swords, such as is so often mentioned in the history of the Gauls[a], convened for the purpose of deliberating upon the campaign or the siege, and which, in England, was held long after the establishment of a regular Legislature[b], in which it was usually concealed amongst the Senate and the Synod. For the States, or Parliaments, however they may be called, of the Middle Ages, are to be considered, not as simple and single conventions, but as the simultaneous assembly of different Courts, Tribunals or Estates, each of which also might, and sometimes did, assemble without the others, to whom it was more commonly associated.

the Supreme Judicial Assembly.

Another of the Supreme Councils, was the Supreme Judicial Assembly, which represented the distinct authority of each rank and order of which the state was composed, and of each jurisdiction which the country included. The court was divided into branches, the first consisting of those who were Judges, either in their own right, or as the Aulic officers of the King; and the second, of those whose functions were virtually derived from the people. Thus the general "Placitum," the Cour Plénière of the ancient Franks, was composed of all the Bishops, the Prelates, the Counts, and the Baronage, who were within the jurisdiction of the Imperial Missus, by whom it was summoned. But none of the powers of judgment could be exercised without the Twelve Echevins of every Centena, who attended the Count to the place

General "Placita" of the ancient Franks, composed of the Bishops, &c., and of the Twelve Echevins of every Centena.

[a] Livy, lib. xxi. c. 20. Cæsar, de Bello Gallico, lib. v. c. 56. Nicholaus Damascenus apud Stobæum, p. 470.

[b] Such as the Council held at Worcester, 22 Ed. I.; and the Parliament at Salisbury, 25 Ed. I., Parliamentary Writs, vol. i. pp. 265 and 51.

of judicature. So essential was the number of Twelve, that if so many Echevins could not appear, the complement was to be made up from the "best men of the County." In addition to their other functions, the Echevins possessed the powers of legislation. They testified the consent of the people, of whom they were both the Judges and the Representatives, to the capitularies propounded in behalf of the Sovereign[a]. A new statute proceeded in the first instance from the will of the Sovereign, guided by the deliberation of his Council; but it could not be added to the national code until the "people" had been required to give their consent; and if they accepted the Bill, they were to testify their assent by signing and subscribing the very record. Such is the substance of the text of the law. But the original ratification of the capitularies, added to the Salic Code, becomes the most important comment upon the language of the legislator. The new Chapters were read in the public Mallum at Paris, that is to say, before the Echevins; and these functionaries having consented and declared that they would observe the proposed enactments in all times to come, they added their signatures as a lasting testimony of the assent which they had given. If these proceedings had not been preserved, the power of legislation would have appeared to devolve upon the community at large; and although the fact might have been surmised, still the assertion, that the mention of "the people" only implied those to whom the power of the people was delegated, might have been treated merely as a hazardous conjecture.

The Twelve Echevins, Judges and Representatives of the Centena.

Capitularies direct that the "people" shall be asked to assent to new laws; but which assent was given by the Echevins.

A Lagsaga of Sweden exhibits the simplest form of judicial and legislative union. Twelve of these Provinces, originally independent states, composed the Kingdom[b], each containing many Hærreds, districts which, as we have seen, had a final power of jurisdiction, as far as concerned their territorial rights, and also a power of criminal judicature. But those suits which could not be decided within the limits of the Hærred, were reserved for the high remedial and inquisitorial court of the Reeffsting[1], which was constituted in the following manner: The "Lagman," or

Court of the Lagsaga of Sweden composed of the elected "Lagman," or Lawman (see below, p. 106),

[a] Caroli Magni Capitula addita ad Legem Salicam, A.D. 803. Cap. Tertium, A.D. 803, § 19. Ludovici Pii Capitula addita ad Legem Salicam, A.D. 819, § 3. [Ordinances of Charles the Great added to the Salic Law, A.D. 803. The third Ordinance, A.D. 803, § 19. Ordinances of Louis the Pious added to the Salic Law, A.D. 819, § 3.]

[b] Upland, Oland, East Gothland, West Gothland, Sudermanland, Westmanaland, Warmaland, Nærike, Dala (Dalecarlia), Thiohæridz, Norfinna, Suderfinna (North Finland and South Finland).

Part I. Ch. III.

Lawman, was Speaker or President; the Bishop, two Priests from the Episcopal Chapter, and two of the King's Council, were associated to him; and if the latter were absent, two good and free-born men were elected, to supply their places, by the Lawmen and the Clergy. The Commonalty were represented by Twelve men, who were elected and named by the King and by the Landsmen. The members of the Næmda, the Twelve men who were the Judges of the Lagsaga, were also its Legislators on those rare occasions when a new law was required. Thus the revised custumal of Upland is prefaced by a Charter, which affords some elucidation of their functions. The Lawman, in the name and on behalf of the people who had elected him, represented to King Bergher[1], that the old laws were hard to bear, and harder to understand, and prayed a remedy for those evils. "We delayed granting this request," it is declared by the King; "for we would not hastily change the 'old law.'" At last he issued a precept, by virtue whereof the Lawman proceeded to the nomination or election of a Næmda of Twelve men, who were to determine what was the old law of the country, and what was to be shaped and set together in the new law. This task they performed; and the new code, resulting from their declarations and opinions, was read to the assembled Bondes for their adoption and approval, which being obtained, it was ratified and confirmed by the Charter of the King[a]. The Næmda of the Lagsaga had also the power of taxation; for no new tax or tribute could be imposed except by their authority[b]. From these delegations the Parliaments of the North appear to have originated, in the same manner as the general Placita of the Franks were formed by the convention of the Scabini of each Centena; and the Næmdas of Twelve men were the precursors of the Estate of Peasants in the more modern Diets of the Northern Kingdoms: for in the singular and eventful history of these States, we can trace the gradual depression, step by step, and stage by stage, of the Bondes, from the era in which they constituted the very pith and nerve of the nation, to the annihilation of their independence.

the Bishop, two Priests from the Episcopal Chapter, two of the King's Council and the Næmda of Twelve men elected and named by the King and the Landsmen.

Customary laws of Upland revised and re-enacted under King Bergher, 1296.

Næmda of Twelve men elected for the purpose of reforming the laws.

Laws declared by the Næmda, confirmed by the royal Charter.

Taxes imposed by the Næmda.

The Estate of the Peasantry in the modern Diets of Denmark, Sweden and Norway, created out of the Næmda.

Denmark and Sweden having, in some measure, remodelled their public law from the policy of the German Empire of the Middle Ages, it may not be irrelevant to exhibit the constitution of another general court, which, though possessing many

[a] Uplandz Laghen, Foretal, pp. 1, 2.

[b] Stiernhook, de Jure Sveonum, p. 48.

peculiarities, tends to exhibit the principles of the conformation of the judicial tribunals of Scandinavia, in the remotest antiquity. Iceland, settled by the Northmen before the introduction of Christianity, and whilst they yet retained their ancient customs, without modification or alteration, was composed of districts entitled Godords[1], of which the jurisdiction was vested in an hereditary magistrate, called the Godordsman. He was the Priest as well as the Judge of his district; sacrifices were performed under his direction, and the rude Temples of Thor and Odin confided to his care. His judicial functions were exercised conjointly with a court of Twelve men, a Næmda, whose office appears to have been in most respects analogous to the same body amongst the Suio-Goths. The entire island was divided into quarters: the Northern Fierding[2] contained twelve Godords, the other three respectively only nine. When the supreme judicial and legislative Assembly or "Lögretta"[3] was convened, the Godordsmen attended by virtue of their office; but as it was necessary that each district should be represented by the full legal complement of Twelve legislators, three additional Judges were taken from each southern quarter, and associated to the hereditary Godordsmen. Every one of these Barons of the Icelandic Parliament was to take two men from amongst the suitors of his court to bear Counsel with him. The ancient code from whence these regulations are derived, is not explicit with respect to the mode by which the Counsellors were elected; but they seem to have been named by the suitors of the Court of the Godord. When the Lögretta was assembled on the Hill of Pleas, it consisted of Twelve times Twelve, or one hundred and forty-four members, virtually representing the people; to whom were added the Bishops and the Lawmen of the Island. In this court the "Men of Iceland were to reform their laws, if they would." All reversals of outlawries were effected in the "Lögretta"; and there all concords were passed which required the assent of the Legislature. No measure could be adopted if less than Forty-eight members were present. Questions were decided by plurality of votes; and if the minority consisted of any number greater than Twelve, then the voters on each side swore that they had given their votes according to good conscience; but if less than Twelve were dissentient, that solemn sanction was not required[a].

Iceland, how governed.

The Godordsman, Priest and Judge of his District or Godord.

Acts conjointly with a Court of Twelve men.

Iceland divided into Fierdings, or quarters.

Lögretta, or supreme legislative assembly, composed of Twelve Godordsmen or Judges from each quarter; and each of whom was accompanied by two others, making altogether Thirty-six from each quarter.

Full Lögretta composed of One hundred and forty-four Godordsmen and Suitors, together with the Lawmen and Bishops.

[a] Arnesen, Islandske Rettergang, pp. 380, 381. See Part II.,

Part I. Ch. III.

I have digressed into the foregoing details, as introductory to the notice of the Anglo-Saxon Shire, a district which, in its origin, belongs rather to the political than to the legal history of the country. Kent, Sussex and Essex are to be viewed as Monarchies reduced to dependency, which, after having been governed by Kings, who, to use the expression of modern diplomacy, had been mediatized by their more powerful neighbours, were ultimately united to the crown of the sovereigns who obtained the pre-eminence of England. Norfolk, Suffolk, Middlesex and Surrey bear in their names a proof of being equally entitled to the rank of original settlements. The independence of other principalities, such as Lindesse, the modern county of Lincoln, and of "Hwiccas,"[1] a district conterminous with the ancient Bishopric of Worcester, may also be traced; the latter, in particular, having been governed by princes, under the title of "Subreguli," whose charters are yet extant. And the history of Mercia and Wessex affords the presumption that many other of the Shires of these Kingdoms were originally distinct and original Royalties, formed by the Anglo-Saxons as they were won from the Britons, either by conquest or by qualified submission, and even by the gentler mode of matrimonial alliance between the daughter of a British ruler and the stern invader. So that the acquisition of the Lordships of the Welsh Marches after the Conquest was only a continuation of the system which had preceded it; the same causes continuing to produce the same effects.

The Anglo-Saxon Shires divided into two classes, such as in their origin were Kingdoms or independent States, Kent, Sussex, Essex, Norfolk, Suffolk, Middlesex, Surrey, Lindsey (or Lincoln), &c.,

or formed out of British States or Principalities.

But there were Shires, constituting a second class, arising from the dismemberment of the larger Kingdoms, and which seem to have been formed by placing one or more Wapentakes or Hundreds under the government of an Earl or his deputy. Yorkshire was thus taken out of Deira; Derbyshire, originally a part of the ancient South Humbria or Mercia, is another Shire of the same description. The tract between the Ribble and the Mersey, the modern Lancashire, does not appear to have been made shire-land at all before the Conquest; and, in some instances, smaller Shires have been annexed to a larger district. "Winchelcombshire"[2] was thus united to Gloucester by Eadric Streona, of whom so much evil is recorded[a].

Shires of the second class, dismemberments of larger States or Kingdoms, such as Yorkshire, Derbyshire, &c.

The country between the Ribble and the Mersey, not made shire ground before the Conquest.

Shire of Winchelcombe added to Gloucester by Eadric Streona, about 1017.

Proofs and Illustrations, pp. 272–273 for a fuller account of the Icelandic Courts.

[a] Hemingi Cartularium, p. 280.

Formed thus, at various periods, and upon different systems, it seems to follow, that the Shires were not necessarily administered according to a uniform scheme; and in those which we have termed the mediatized Kingdoms, such as Kent, the Shiremoots possessed much greater powers than in the secondary Shires: yet any variation in the mode of government did not probably affect the judicial organization, which continued, in great measure, independent of the political administration. For the due execution of the judicial powers, there are regulations extant, which provided that two general Shire courts, at least, were to be held in every year[a]. Here the Bishop and the Ealdorman were to preside, and respectively to declare the ecclesiastical and municipal law. The Bishop was *that* Prelate, in whose diocese the Shire was locally included. The Ealdorman was originally a dignitary, whose power might extend over the Shire, without being necessarily bounded by it. Aylwin thus ruled the whole of East Anglia.

Shiremoot composed of the Bishop, the Ealdorman, the Gerefa.

After the Danish invasion, the Eorl took the station of the Ealdorman, and though Canute repeats the law of Edgar, without any alteration, it is not certain whether this last title of dignity had then the same import. Every Shire had also its Gerefa; and besides these functionaries, it seems that all the "Land Lords," who were bound to suit and service, attended in person, or answered by their Gerefas, their representatives. After the Conquest, every Shire contained many Landholders, who were bound to appear at the County court by reason of their tenures; and though the want of Anglo-Saxon records renders it impossible to shew that the duty was so performed at an earlier period, yet no grounds exist for assuming that the custom was an innovation. When Robert Fitz-Hamon won Morgannoc out of the Welshman's hands, he divided its Lordships and castles amongst his Twelve followers, and each had their several apartments in the Castle of Cardiff, where they were bound to give attendance on every court-day held for the seignory; and this institution, though of more recent date, is modelled after the Saxon Shire[b]. If, as there is every reason to suppose, the Convention before the more modern Justices in Eyre was equivalent to the Shiremoot, each Hundred was specially represented by Twelve men, corresponding to the Teutonic Echevins, and who perhaps attended with the

The more recent Court before the Justices in Eyre, probably equivalent to the ancient Shiremoot. Each Hundred, Burgh and Manor, in ancient demesne, represented by twelve Jurors.

[a] Edgar, I. § 5. Canute, II. § 17.

[b] Wynne, History of Wales, p. 115.

Part I. Ch. III.

Ealdorman. The same delegation was required from the Burghs and demesne Manors of the Crown, which, as I have before observed, were equivalent to distinct Hundreds; and the Four Men and the Reeve from each Township, who were present on behalf of all of their Townships, who were not specially summoned, completed the assembly[a]. In this court, most of the pleas, in which the King was a party, were determined. In criminal cases, these resulted from the infraction of that protection which was emphatically termed his Peace, and which might extend the cognizance of the court to almost every transgression. The rights of the Church were also determined in the Shiremoot; and the Judges of this high remedial tribunal appear to have been specially charged to protect the people against the abuses and oppressions of unrighteous power. There were many features, however, which the Shiremoots had in common with the Hundred, the promulgation of deeds and charters, for instance, might take place, either in the Shire or the Hundred; and it appears, that, in all civil suits, the Shire had an original jurisdiction, similar to that of the Hundred, besides the appellate jurisdiction over the subordinate community. It may be added also, that, like the Hundred court, the composition of the Shiremoot seems to have varied with its object, and that, like the ancient Parliaments, it appears to have contained within it more than one court or assembly; and that, therefore, if we do not find any appearance of the judicial delegation in these proceedings, which, from their nature, merely required the sanction of the Thanes or Baronage, we are not thereby compelled to deny their powers or existence.

The Four Men and the Reeve of the Township.

Echevins, or Jurors, amongst the first Representatives of the People.

I have observed that the Næmda was the foundation of the representation of the peasantry in the Scandinavian Diets; the conversion of Jurors or Echevins into virtual representatives of the people, in assemblies possessing the powers of legislation, is one of the most singular events in the history of the Teutonic jurisprudence; and it is so general, as to lead to the supposition, that almost every Court, Parliament, or Assembly, in which the Commons obtained a share in legislation, has arisen, in part, from a tribunal, in the nature of a Court of Echevins, of an Inquest, or of a Jury. Wales affords an early example of such a delegation, in the assembly convened by Howel for the reformation of the law. Six men were called from every Commot, that is to say, Twelve from every Cantred, versed in the law, and distinguished by their

Laws of Howel (see above, p. 29) enacted by an assembly composed of Six men, summoned from every Commot, or Twelve from every Cantred,

[a] Leges Henrici I., § 7.

station. Their advice, joined to that of the Clergy, was given upon the basis of existing customs; they repealed the bad laws, amended others, and enacted new; and the Code so prepared, when confirmed by a second delegation of twelve laymen, and one clerk, Blegored the Wise, became the existing law. Four narratives are given of this transaction, each differing in detail, but all agreeing in the circumstances of the delegates from each Commot or Cantred[a]; and although we may regret that a clear account of the assembly was not preserved, still the discrepancies perhaps rather confirm its authority on some of the points which are most material in the deduction of authority.

confirmed by a second delegation, composed of twelve laymen, and one clerk, Blegored the Wise.

Analogous to these proceedings, was the assembly held by William the Conqueror, and which Lord Hale was inclined to consider "as sufficient and effectual a Parliament as ever was held in England."[b] The English, having demanded the laws of the Confessor, William, after some hesitation, gave his consent. Twelve men were then summoned from every Shire, who were sworn that they would well and truly declare the law, without addition, prevarication or concealment; and the presentments having been reduced into writing by the King's authority, they acquired or retained the force of law. Neither of these examples is free from objection. The mode of legislation adopted by Howel, stands, as far as I am aware, without any exact parallel in Wales; and the narrative of the assembly convened by William is not to be found in any contemporary authority. To the Cymric antiquary I abandon the defence of the laws of Howel; but with respect to the statements which we obtain from Hoveden, and the Chronicle of Lichfield, it may be observed that, although these existing texts are written perhaps a hundred years after the events which they record, the custom to which they relate is susceptible of a series of proofs, so close and continuous, that even if the Convention of the Conqueror should be rejected, the main argument will scarcely be weakened by its loss, for the custom of giving the law by the oath or presentment of a Jury, is susceptible of such an infinite number of examples, that the only difficulty is in selection.

Laws of the Confessor, demanded by the English (see above, p. 43), and declared by Twelve sworn men, summoned from every Shire;

whose presentments were confirmed by the Conqueror, in the same manner as the presentment of the laws of Upland (see above, p. 92).

Custom of "giving the law," by the presentment of a Jury; which presentment afterwards became ordinances, by-laws, &c.

In its simplest form, we may quote the Ordinances of Romney Lathe; the Statute of the Twelve Knights of England and the Twelve Knights of Scotland, sworn to recognize the laws and

Ordinances of Romney (see p. 82). Border laws declared by the oaths of Twelve English and Twelve Scottish Knights, 1249.

[a] Leges Wallicæ, pp. 3, 5, 6, and 7.

[b] History of the Common Law.

Part I. Ch. III.

customs of the Marches[a] and the Articles of the ancient Barmoot Court[b1], prescribed, ordained and set by the oaths of the grand Inquest of Warkesworth Wapentake, empanelled for the King[c]. Of a more complex description is the great court of the Duchy of Cornwall. The Shires are divided into four quarters, each of which has its Leet, in which the trial is given by a Jury of Six Tinners in Cornwall, and of Twenty-four in Devon. And such Jurors empanelled from each quarter, elected, sworn and tried, and united in one Convention or Assembly, constitute the ancient Stannary Parliament[2], whose acts and ordinances have the force of law[d].

Articles of the Barmoot Court, ordained by the grand Inquest of Warkesworth Wapentake.

Stannary Courts, or Parliaments, of Devon and Cornwall, composed of four Leet Juries, empanelled from the four quarters of the Shire.

The Isle of Man, long subject to Norwegian Sovereigns, but peopled by a Celtic race, consists, as I have before observed, of six Sheddings or Hundreds. In the Moar, the chief municipal officer of the Shedding, we have no difficulty in recognizing the Maer of the Cymri; but the Commons of Man were not ascribed to the glebe, and his authority appears to have been confined to the general superintendence of the peace of the community. The Judges, whose Gothic name appears to indicate a Gothic origin, the Deemsters[3], in their Eyres through the Island, held the Courts of the Shedding, which were "fenced," by calling in the Four honest men of every Parish, by whose presentment offences were determined. The civil jurisdiction was vested in a Shedding Jury of Six lawful men, though the Four men of the Parish decided matters of smaller importance[e].

Isle of Man, composed of six Sheddings or Hundreds. (See above, p. 77.)

The Moar, or Maer (see above, p. 54), the chief municipal officer of the Shedding.

The Deemsters.

"Fencing" of the Shedding Court, Four men from every Parish.

The Shedding Jury.

[a] Statuta Viginti Quatuor Militum, &c., Bishop Nicholson's Border Laws.

[b] More properly, Bergmoth or Berghmoot. "This Bergmoth, or Berghmoot, comes from the Saxon *Berg*, i.e. mons; and *mote*, or gemote, conventions: quasi the Court held upon a Hill (see below, p. 112), for deciding pleas and controversies among the Derbyshire miners," Cowell, Interpreter.

[c] Warkesworth Wapentach'; Rotulus Curiæ Magnæ Bermot, tentæ apud Warkesworth coram Francisco Com. Salop', 20 Sep. 3 Ed. VI., Original in the Tower of London.

[d] Carew, Cornwall. Pearce, Laws and Customs of the Stannaries, pp. 21, 98. Rotulus Magnæ Curiæ Domini Regis Ducatus sui Cornubiæ apud Crockentorre, 24 Sep. 2 Hen. VIII. Do. 28 Oct. 24 Hen. VIII. Great Court in Parliament of our Sovereign Lady Elizabeth, of the Duchy of Cornwall, holden at Crockentorre, Pearce, pp. 196–240.

[e] Camden, Britannia. Chaloner, Discourse of the Isle of Man,

The popular branch of the supreme legislative and remedial Assembly, usually called the Tynwald[1], from the hill upon which its decrees were promulgated, was composed of Six men of every Shedding, chosen by the Commons of Man; they were the eldest and worthiest of all the island; and according to one mode of legislation, for the mode differed with the object, they asked and besought the points which they wished to be confirmed as law, their petition being addressed to the King or Lord of Man, and to his Council, which was composed of the Bishop, the Heads of the religious houses, the Two Deemsters, and the Aulic officers[a], in the same manner as, in England, the Petitions of the Commons were presented to King and Council. In the exercise of their criminal jurisdiction, the party accused was tried by an Inquest of Twenty-four, called and sworn from amongst the Thirty-six Representatives of the Commons; and the Jury possessed not only the power of deciding any particular case, but of giving that answer upon oath, which was the foundation of the law. When the law was to be ascertained or made known, it was the ancient custom to crave the advice of the Twenty-four, the Keys[2] of the island, who, elected for the purpose of declaring the doubtful points of law, were at the same time empanelled as a Jury; and the authority, both of the Deemsters and of the Lords of the island, was equally limited by the verdicts which they gave[b]. In the preceding instances, it will be observed, that the legislative functions of the Keys were called into action by the Sovereign and the Judges of the land; but when the Keys assembled as a remedial court, the representatives of the Townships re-appeared on the behalf of the community. So late as the seventeenth century, an instance of this procedure can be found; when the Lord, the officers spiritual and temporal, the

The Tynwald Court, anciently composed of Six men of every Shedding.

Laws sometimes made upon their petition, addressed to the Lord of Man and his Council, 1430.

Criminal jurisdiction exercised by a Jury or Inquest of Twenty-four (now called the Keys), called and sworn from amongst the Thirty-six men of the Sheddings;

which Jury, elected for the purpose of declaring the doubtful points, had the power of making or creating laws by their verdicts or presentments, 1442–1594.

Remedial Court of Tynwald, composed of the Lord, his Council, the Twenty-four

subjoined to King's Vale Royal of England, pp. 18, 19. Fencing of the Shedding Court: Lex Scripta, or Statutes of the Isle of Man, Douglas, 1815, p. 85. The Statutes, &c. of Man are quoted from this publication; but a more accurate collection of these singular documents is much to be desired.

[a] Court of all the Commons of Man, holden at the Castle of Rushen, Tuesday next after the 20th day of Christmas, 1430.

[b] Questions propounded by Sir John Huntley, Lord of Man, on the Vigil of St. Mary, 1422. Proceedings of the Deemsters, 1570. Articles and Questions propounded by Radulph Stanley, Esq., Captain of Man, 24 June, 1594.

Part I. Ch. III.

Twenty-four Keys, and the Four Men of every parish, assembled to consider and advise on the grievances of the Church and Commons of the isle. These principally related to the proceedings of the parochial Clergy; and to obtain a more definite statement of the alleged abuses, a Jury of Twenty-four men was chosen, Twelve taken from the Keys, and Twelve from the Four Men of the Parishes. By this Jury, a presentment was made, to which the Clergy were required to answer; and the proceedings being returned before the Lord of the island, he pronounced his decision or doom. The Bishop, the Clergy, and the Four Men of the parishes, assented thereto; the presentment of the Jury, sanctioned by the Sovereign, became a statute of the Legislature, and is now the law[a]. The Keys, however, gradually assimilated the style of their enactments to that of the English Parliament, and they are allowed to retain their offices for life; yet they are still the representatives of the country, the grand inquest of the nation for all grievances touching the public, and the last traverse in all cases of common law[b].

Keys, and the Four Men of every Parish, assembled for the redress of grievances, 1643.

Jury of Twenty-four elected; Twelve taken from the Keys, and Twelve from the Four Men of the Parishes.

In the Island of Man, the Jurors of the Tynwald have become the sole legislative estate. The States of the Norman Islands offer a more singular example of a government, not very dissimilar to the English Parliament, gradually formed out of the ancient Teutonic jurisdictions. Guernsey and Jersey each contain Twelve parishes, or rather Hundreds, which are composed of districts termed Vintains. It is stated that twenty families formerly dwelt in each Vintain, but this seems to be merely an opinion founded upon the etymology of the name; and as it was the original custom of the island, that there should be Twelve Vintaineers in the parish, we would rather suppose, that, in early times, the number of Vintains corresponded. A military authority belongs to these functionaries. All men of the Vintain are to be under arms at their command; and they collect the taxes, which are assessed by the sworn Dozeineers, a body of Twelve men, and who possess a judicial authority, the Vintaineers being only ministerial. The Constable of the parish, chosen by the votes of all the inhabitants, is the presiding magistrate; he holds his office for three years, and is assisted by two Centeneers, who are now in the nature of substitutes or lieutenants; and by these

States of the Norman Islands, how similar, in general constitution, to the English Parliament.

Guernsey and Jersey each composed of Twelve parishes.

Vintains, said to have been formerly composed of twenty families.

Originally Twelve Vintaineers in each parish.

Military authority of the Vintaineers.

Taxes assessed by the sworn Dozeineers, or Twelve sworn men of each parish; also possessing a judicial authority.

Constable, chosen by the inhabitants of each parish.

Assisted by two Centeneers.

[a] Proceedings "apud Castrum de Rushin" [Proceedings at the Castle of Rushen], June and October, 1643, p. 119.

[b] Sacheverell, Account of the Isle of Man.

officers, peace and order are maintained, and all other things done which are found conducive to the good government of the community. Chieftains in their respective districts, the Twelve Constables also form the Grand Jury, by whose presentment criminals are tried; and they now appear as the Commons, the Representatives of their respective parishes, and the third estate of the Legislature of the island. Yet, by the ancient practice, they did not entirely supersede the legislative inquests, the laws and usages being declared by the verdicts of the Twelve Prodehomes[1] of each of the Twelve parishes of the island[a]. King John, by his Constitutions, confirmed the right of election of the Twelve sworn Coroners or Jurats, who compose the supreme Court of Judicature, an authority which, however, they shared with the King's Justice, if he happened to be present in the island. Whilst every Judge in England was amovable at the pleasure of the Sovereign, the Jurats or Justiciars of Guernsey, for it is by the latter title that they are still known to the common people, held their offices during life, unless deprived for lawful cause. Their authority enforces on all persons the due obedience to the laws; they are the permanent conservators of the peace, and constitute the second branch of the Estates. The Clergy complete the legislative Assembly; and the Twelve Rectors of the Twelve parishes, forming the first branch of the Estates, represent the Church of the island. Guernsey possesses a very pure and ancient feudal nobility, and it is probable that the Lords and Tenants in capite were the Optimates, amongst whom the electors of the Jurats were to be found. But no individual Seigneur has now any right to sit in the States by reason of tenure, although he is bound to render suit and service to the "Court of Heritage," the Court Baron of the island; a circumstance which throws some light on the constitution of the English Parliament, and of other jurisdictions, where the remedial and the feudal Courts have become united. The earliest notice of the "Sworn Coroners," is found in the "provisions" of King John, which he ordained after Normandy was lost to the English Crown. Those who are conversant with ancient charters, know how generally the clause which professes to be a grant is in truth only a confirmation; and whatever stability the Charter of John

Twelve Constables form the Grand Inquest of the island, and also represent the Commons of the island in the Assembly of the States.

Legislative Inquests; Laws and Customs declared by the verdicts of the Twelve "Prodehomes" of each of the Twelve parishes. 5 Ed. III.

Twelve sworn Coroners, Jurats, or Justiciars, who hold their offices for life, and form the second branch of the Estates.

Twelve parish Priests represent the Church and form the first branch of the States.

Tenants in capite, or feudal Nobility, have no entrance, as such, in the States, but bound to render suit and service to the Cour de Heritage.

[a] Uzages et anciennes Custumes de Guernesey, approvees devant Sir Robert de Northone, Chivalier, et Sir Williame de la Rue, 5 Ed. III., MS. Sloane 3828, f. 184.

Part I. Ch. III.

may have given to the franchises of his Norman subjects, the whole frame of their government bespeaks an earlier origin[a]. No similar institution can be pointed out in the mother country; but the records of Normandy have perished; they were destroyed, as is said, by Richelieu[1]; and the archives of Rouen afford no information whatever which can elucidate the ancient constitution of the Duchy anterior to the fourteenth century[b]. The Armorican republic included the more modern Neustria within its boundaries[c]; but its subsistence under the Frankish Sovereigns is very problematical. The States of Normandy, in the fourteenth century, were composed of the Deputies of the Clergy, the Nobility, and the "État Commun," one Commoner being returned for every Vicomté, a district corresponding, not to the English Shire, but to the Hundred. As the representation of the third estate is usually attributed to the age of Philip le Bel[2], the deputation of the Commons may be thought to have originated in that era. Normandy, however, affords an example of a singular, though transient, attempt for the establishment of such a Government in the tenth century. When the Norman villeins rose against the Nobility, asserting their pristine freedom, they elected two representatives from every Clan or Sept, who appeared on behalf of their constituents at a general Assembly. Seeking to emancipate themselves from predial servitude, they demanded the free use of the woods and waters, to be enabled to hunt the deer and cast the net, without restraint or impeachment. Raoul, Count of Ivry[3], the uncle of Richard the Second, suppressed this incipient revolution, though not without the most atrocious cruelties, which form a dreadful blot in the annals of the reign of the "good Duke," as he is termed by the Monk and the Minstrel, and the Villeins

Great Rebellion of the Norman Peasantry, 996, who establish a general Convention, consisting of the representatives elected from every Clan or Sept.

Rebellion suppressed by Raoul, Count of Ivry.

[a] Falle, Account of Jersey, &c., pp. 231, 233. Disney, Account of Guernsey, pp. 77, 79. Constitutiones et Provisiones constitutæ per Dominum Johannem Regem postquam Normania alienata fuit. [Constitutions and Provisions established by our Lord, King John, after Normandy was lost.] The Constitutions are not extant in the original, being preserved in an inquisition taken temp. Hen. III., Falle's Appendix. Placita coram *Johanne de Fresingfield* et aliis Justiciariis itinerantibus in Insulis de Gernsey et Jeresey, &c., 2 Ed. II., Placita de quo Warranto, pp. 825, 826. [Pleas in the presence of *John of Fressingfield* and other Justices in Eyre in the Islands of Guernsey and Jersey, 2 Ed. II.]

[b] Le Noir, Titres Normandes.

[c] Decline and Fall, c. 31.

returned to the plough; but this Jacquerie seems to afford an almost irresistible presumption, that the descendants of Rollo had excited the rebellion by some great and grievous acts of oppression, and that the nature of a popular court or Government was not unknown to the rustic community[a]. It must be recollected, however, that the sphere of action anciently belonging to popular representation was not that to which we are now accustomed. Legislation was an accidental incident; their primary intent was the administration of the law. The mode, by which the change of functions of the select bodies was effected, can be traced with sufficient distinctness. They were the judges, as well as the witnesses, both of law and fact; for the law itself, unwritten and unrecorded, living in custom and usage, and not gathered from volumes or parchments, was a fact to be ascertained, like any other, from the testimony of the judges or representatives of the community. Language, therefore, which is very inaccurate, if considered with reference to the jurisprudence of modern England, may be applied with propriety to the Næmda or the Echevins; and hence the acquisition of their legislative powers. Called in first for the purpose of delivering the law, they easily accepted the duty of suggesting any amendments which it required; a task for which they were well fitted, both by station and by knowledge.

Ancient laws, unwritten and recorded by the testimony of the Judges, &c.

Elective officers being mentioned in the laws of the continental nations, it is not unreasonable to suppose that they equally existed amongst the Anglo-Saxons, subject to the restriction, that the choice could only fall upon a qualified individual, upon one of the aristocracy, just as the primitive War-King was taken from amongst the Ealdormen. It is said that the Heretochs[1] were elected in the Folkmoot, and that of right the Gerefas of the counties ought to be elected in the same manner[b]; and the analogies which we shall point out may certainly tend to confirm these traditions. But it may be doubted whether popular elections, in the modern sense of the term, ever subsisted amongst the Anglo-Saxons. I have sought, with anxiety, in the ancient records of this Kingdom, for proofs of such a custom; and when first I entered upon the study of our constitutional history, it was with the firm belief that all restrictions upon the right of suffrage

Elective Officers or Dignitaries.

[a] Guilelmus Gemeticensis, Hist. Norm., lib. v. cap. 2. Wace, Roman de Rou et des Ducs de Normandie.

[b] LL. Edwardi Confessoris, § De Heretochiis, &c.

Part I. Ch. III.

were the usurpations of authority. Every year passed in inquiry, has accumulated evidence tending to refute that opinion, and to shew that wherever any extended right of suffrage exists. it is a victory obtained by the many over the few, and resulting from the destruction of the primitive custom, by which the legal right of election or nomination devolved either upon the chief members, the "magnates" of the people, or upon select bodies, acting on behalf of the community, a custom which may be equally traced amongst the Goths of Spain and the Goths of Scandinavia, and which has also prevailed in Great Britain, from time immemorial, in the municipal jurisdictions of the island.

Analogies between the customs of Gothic Spain and Scandinavia.

Let us first view this custom in the South of Europe, as it was exercised by the Visigoths of Spain. Here the Jury of election formed a part of their military policy. What were the qualifications of the Adalid[1], the leader of the Host? Experience, prowess, good-sense and loyalty; and when a King, or other Lord, wished to create an Adalid, he was to summon Twelve Adalides, the wisest that could be found, and these were to swear, that the soldier whom they would raise to the rank of an Adalid possessed the qualifications required by the law; and a unanimous verdict being given, the office was bestowed upon the person so presented as worthy thereof. If Twelve Adalides could not be found, then the full number was to be completed by taking others, not Adalides, yet experienced in war, and the verdict so given was as good as if it had been given by Twelve Adalides; a regulation analogous to that prescribed with respect to the Echevins attending the General Placita, and resulting from the importance attached to the mystic number. After the verdict was pronounced, the Sovereign honoured the Adalid elect, in such a manner as beseemed him. Horse and armour, and robes and sword, were given to the Adalid, and a Lord of Knights girt him with the sword. A shield was laid upon the ground, upon which the Adalid placed his feet; the King drew the weapon from the scabbard, and placed the weapon in his hand; and the Twelve Adalides, the Jury whose verdict had elected the Adalid, lifted him on high, turning his face towards the east, and he cut the air with the sword, up and down and athwart, in the figure of a cross, exclaiming, "I challenge all the enemies of the Faith, " and of my Lord the King, and of his land"; a challenge which was repeated to the other three quarters of the world. His sword was now to be sheathed, and the King, placing a banner in his hand, declared him to be a lawful Adalid; and from

Adalid, or leader of the Host, elected by a Jury of Twelve Adalides.

If Twelve Adalides could not be found, Jury completed by a *tales*.

Inauguration of the newly-elected Adalid: he was girt with the sword and hoisted, or lifted up, on a shield, by the Jury of election.

thenceforth he might bear arms and banner, and fight on horseback, and he was to sit at the board with the Knights; and over the Knights and Gentlemen he was to command by speech, and over the Almogavares[1] and foot-soldiers by deed[a].

No one could obtain the rank of an Adalid, unless he had first served as an Almocaden[2], or leader of infantry. The Peon, or foot-soldier, who aspired to this distinction, appeared before the Adalides, the leaders of the Host, who, summoning Twelve Almocadenes, demanded upon oath, whether the candidate was possessed of the necessary qualifications. What were the qualifications of the Almocaden? He was to be loyal, experienced, light of foot, and strong in arm; and if the verdict was favourable, he was conducted to the King, who clothed him anew, and delivered to him a lance, with a pennoncel or streamer, as the insignia of his office and station. Two lances were then crossed upon the ground, and the Almocaden, taking his stand upon them, was elevated by the Jury of Twelve Almocadenes, in the same manner as the Adalid was lifted upon the shield; and like the Adalid also, he repeated his challenge to the four quarters of the world. These ceremonies are eminently characteristic of the Gothic spirit, and I have related them in minute detail, because they bear an important relation to the general question. It was by the same significant forms that the King of Navarre was inaugurated, when, standing on the shield, he was lifted up in the presence of the people by the Twelve Ricos Hombres[3], who composed the Council which was to guide him[b]. At the period when the "Fueros" of Navarre[4] were compiled, the Monarchy had ceased to be elective; but the civil government and the military policy of the Teutonic Tribes were closely connected, or rather identified with each other; and the elections of the leaders of the Castilian Knighthood probably retrace the institutions which prevailed amongst the Goths, when the King himself was but the Chief of an army encamped in the territory of an enemy.

Almocaden, or leader of the infantry, elected by a Jury of Twelve Almocadenes.

Newly-elected Almocaden hoisted by the Jury of election.

King of Navarre inaugurated by a similar ceremony.

Amongst the Suio-Goths, the customs of their distant brethren are incorporated in their political and constitutional jurisprudence. Thus the "Hærredz-Hoffding" was elected by a "Næmda of Twelve," chosen by the Bondes of the "Hærred," associated to the "Lagman" of the province. By them, three persons were named and presented to the King, who selected one of them to

Hærredz-Hoffding, or executive Magistrate of the Suio-Gothic Hærred, elected by the Næmda.

[a] Siete Partidas del Rey Don Alonzo[5], P. ii. tit. 22. l. 1–6.

[b] Fueros del Reyno de Navarra, lib. i. tit. 1.

Part I. Ch. III.

hold the office; a mode of election sufficiently familiar to the municipal laws of England. A process somewhat more complex was employed in the election of the Lagman. Eight days before the election, the Bishop summoned the "Almogen,"[1] or Commonalty to the "Landzthing." Six "Hoffmen," or Barons enfeoffed by the King, and Six Bondes, were chosen by the Commonalty; and the Næmda of Twelve, representing the nobility and people, and united to the Bishop and two Priests on behalf of the Clergy, nominated three persons, one of whom, as before, was selected by the King[a]. The Crown was bestowed in the same manner as the office of the Judge. When the King departed this life, the Lagmen of each province, and the "Almogen," or Commonalty, named and chose Twelve Men, "wary and wise," who, on a certain day, were assembled at the rock of Mora, to elect the future King. Being so convened, the votes were given in succession: the first voice belonged to the Lagman of Upsala, and the Næmda of Twelve, who accompanied him; the others then followed in order; and the person who had the plurality of voices was adjudged to be King by the assembled Lagmen. Thus elected, the King swore on the Gospels that he would observe the laws. The Lagmen and the "Almogen," that is to say, the representative electors, on their parts, confirmed the compact by their oaths of fidelity. But the King was not fully in possession of his authority, until he had taken possession of the several States which had named him, and in each of which he promised that he would truly hold the oath which he had sworn at the rock of Mora; whilst the Commons, on their part, renewed their homage. In making this circuit, he was said "to ride the road of Eric,"[2] a term of very obscure signification, but which was derived from the age of Paganism, and, until it was performed, his rights do not seem to have been assured or confirmed[b].

Lagman, or Judge of the Suio-Gothic Lagsaga or Shire, elected by the Næmda, half of Bondes, and half of the King's feudal Tenants.

King of Sweden, elected by the Næmdas of Twelve Men,

and afterwards inaugurated in each Province,

for which purpose he makes a circuit, or "rides the road of Eric," through his Kingdom.

In Norway, though the hereditary succession of the Crown was established by law, still the same assemblies were called, in order to settle the succession of the Crown, when the throne became vacant, either by the forfeiture or incapacity of the Monarch. In those cases, according to the law of Haco, the foster-son of Athelstane[c], the Archbishop and Bishops, and Twelve of our best

Succession to the Crown of Norway decreed,

[a] Sverikes Rikes Landzlagh; Tingmala Balker, cap. 1, 2.

[b] Landzlagh; Konungs Balker, cap. 3, 5, 6.

[c] Hagen Adelsteens Gule Tings Lov. Christendom's Balk., cap. 1. See also the Hirdskraa, cap. 3.

men in each diocese, decreed the Crown to such of the brothers of the deposed Monarch as was deemed most worthy. The Laymen were sworn, and made the election upon their oath; but the Prelates gave their votes upon their conscience and honour. If the royal family became extinct in the direct line, the Bishops and Abbots, the royal Thanes, and all the royal Feudatories, assembled at the shrine of King Olave, in order to take counsel with the Archbishop concerning the succession to the throne; the Bishops were each accompanied by Twelve men, as before, and these Juries were to present, upon their oath, the name of the nearest heir to the deceased Monarch, if he was a fitting and proper person to obtain the royal dignity; if not, they were to present the next worthiest of the heirs. Unanimity was not required, and the verdict was given by the plurality of voices, provided the Clergy were on the side of the majority: of the share which the official Nobility had in the election, nothing is said. According to the law, the functions of adjudication and election were singularly blended. The Sagas of the North shew how the right was exercised; not always in the exact mode prescribed by the law, but with variations, which are perhaps more strongly corroborative of the general principle, than if a strict uniformity were observed, inasmuch as they exemplify the steady and stubborn adherence to that principle, though controlled by the greater energy which the royal authority had acquired amongst the Norwegian Kings. Neither the claimant, nor the usurper, could make good his title without the sanction of the virtual representatives of the people. When Suerre[1] the priest, who denied the smith, his supposed father, and aspired to the throne of Norway, as the son and heir of Sigurd[2] the King, had prevailed over his opponents, he ordered that the "Eyrarthing"[3] of Drontheim should assemble. For this purpose, Twelve Bondes were summoned from each of the Eight Hærreds within Agdeness[4]; and in this Court he was declared to be King, and the land and the lieges were sworn and adjudged to be his, with weapon touch, according to the old law[a]. The presence of the King's Earls, his Councillors, his Barons, and his Aulic officers, rendered the suffrages of the Bondes ultimately little more than an empty pageantry. Yet the mere form of their attendance was still considered as so important, that even in the last age, Twelve Peasants were summoned from every

according to the law of Haco, the foster son of Athelstane, A.D. 940, by Twelve men chosen from each Diocese, together with the Prelacy.

Suerre the priest, or Preste-Suerre, recognized as King, by Twelve Men summoned from each Hærred, 1177.

[a] Historia Regum Norvegicorum, Saga Suerris Konungs, c. 16.

Part I. Ch. III.

Norwegian Government to perform homage at the accession of the Danish King[a].

Some of the instances which are adduced respecting the usage of the Duodenary courts, are comparatively recent, and I am aware, as I have before observed, that very competent authorities consider them as the creation of the period wherein they first appear; that the institution of the Scabini has been attributed to Charlemagne, and described or censured as an abridgment of the rights of the General Assembly of the Centena; it being supposed that these assessors were named and selected, to the exclusion of the other freemen, whose places they supplied in judicature and legislation. The appearance of the Judges of the Anglo-Saxon Hundred has been ascribed, in the same manner, to a gradual concentration of the Folkmoot[b]. Were this really the case, a usage, whose date goes beyond a thousand years, is of sufficiently remote origin to be treated as a general and established principle of the jurisprudence of the Middle Ages; and with respect to England in particular, it is of very little consequence whether the germ of our municipal policy be found in the fifth century, or the tenth; whether it be the aboriginal custom of the Saxon, or an imitation of the policy of Charlemagne: and, therefore, without attaching any importance to the discussion, I shall briefly recapitulate the arguments in favour of the antiquity of these Tribunals. According to the Northmen, the institution of the Duodenary courts is coeval with their race. Beyond the Tanais[1], as we are told by Snorri, is the land, which men called Asaheim, or Asaland, and the chief city thereof is named Asgard. Odin was the ruler thereof, and it was a place of sacrifice and burnt-offering. And it was the law of Asgard, that the Twelve Priests of the palace should be the mightiest over all. They ruled over the sacrifices, and gave judgment between man and man; they were called Diar, Priests; or Drottnar, Lords; and to them did the people owe all honour. When the government of Asgard was transferred to Sigtuna[2], the town of Victory, the same tribunal was established there by Odin, in the persons of the Twelve head men, whom he nominated to doom the land's law: and immediately before the introduction of Christianity, the inhabitants of the Kingdom of Drontheim were under the religious authority of the gild or college of the Twelve Priests by whom the sacrifices were

Duodenary Courts, their origin ascribed to Odin.

Asgard, the chief City of the Land of the Ases, beyond the Tanais, governed by the Twelve Diar or Drottnar.

Twelve head men appointed by Odin, to "doom the land's law," at Sigtuna in Sweden.

College or gild of Twelve ruling Priests.

[a] Hickes, Dissert. Epist., p. 50.

[b] Hallam, Middle Ages, chap. viii.

performed[a]. The earthly Asgard, which the Edda[b] identifies with Troy, is, however, only the semblance of the habitation of the gods. There were the governors established in the beginning of the world, who were ordered to decide whatever differences should arise amongst men, and also to rule the heavenly realms. Gladheim[1] was their work; the Hall, in which they built Twelve seats for themselves, and their place of judgment, was under the Ash Ygdrasil[2], in the plain of Ida.

Earthly Asgard, the type of the habitation of the Twelve Dii Majores of the Scandinavians.

But may it not be objected, that the proofs are weakened by their extent? It has been urged, that the traditions of the Edda are the spurious inventions of the Middle Ages, the compilation of the Herodotus of the North, who amused his contemporaries, and deceived posterity, by combining his own fancies with the dreams of the Rabbinists and the poetical fables of classical antiquity; and that the mere mention of Troy, as the seat of the deified heroes of the Ases, is sufficient to disclose the imposture. Neither historical certainty, nor mythological consistency, can be sought in the fluctuating legends of a rude and half-civilized people. Dubious portions of a dubious history, they can only be received when corroborated by more trustworthy testimony; and they are to be admitted as indications of the course which we ought to pursue, only in the absence of more authentic guides. Taking the Saga as it has been transmitted to us, and giving it that large interpretation which is required by the mixture of fact, fable and allegory, there is no improbability in believing that the Duodenary Councils of the Teutons were traditionary reminiscences of the form of government, which, before the invasion of the sons of Hercules, appears to have been the foundation of the policy of the Pelasgic race. The Runes of Scandinavia bear so close a resemblance to the characters of the Etruscans, as well as to the alphabet of Cadmus, that no doubt of their common origin can be entertained; and the same affinity which imparted the art of writing, would equally communicate the model of government and authority.

Mythological traditions, how to be appreciated.

The constant uniformity of the general principle, exemplified amongst all the Teutonic nations,—for, I believe, there is none amongst whom it cannot be discovered—may furthermore be admitted, as tending to shew that such a conformity was the

[a] Historia Regum Norvegicorum. Hervarar Saga, Ynglinga Saga, c. 2. Torfæus apud Gebhardi, vol. i. Intr. p. 41.

[b] Edda of Snorri, Fables 7 and 8.

result of their original policy; for if we balance the conjectures, it will appear much more agreeable to the laws of probability, that a custom uniformly observed amongst so many distinct nations, resulted from a common prototype, wherever that prototype may be found, than that it was the effect of simultaneous invention, after these tribes and nations were scattered so widely; or of imitation, at a period when the world of each Tribe was almost bounded by the horizon.

Influence of the Federative policy of the Teutons.

Abandoning the speculations of the antiquary, it is of more importance to advert to the fact, that the judicial federations co-operated in creating the representative governments, which, perhaps, in their rudest forms, assisted the Teuton to gain his triumph, and to use his victory. When we recollect the powers which remained to the Romans, even in their days of degeneracy; their strongly fortified cities; their hereditary skill in military tactics; their keen weapons; their adamantine armour, it will seem doubtful, whether the mere physical strength of the Barbarians could have enabled them to obtain so complete a mastery; and the success which attended their invasions may be perhaps ascribed, and in no inconsiderable degree, to their habits of political union, and of obedience to the law. Nor must it be forgotten, that the land of philosophy and of song might have enjoyed all the inestimable advantages of justice and of tranquillity, if her sons had been willing to accept these boons; but they would only listen to the voice of the demagogue, and obey the rude empire of the lawless multitude. Democracy prepared the way for the legions of the enemy; and the starveling Greek, sunk into the debasement of habitual and hopeless servitude, degraded even by his talents, became the laughing-stock of the Roman Conqueror; unconscious himself of the destiny which awaited the Empire of the Cæsars, raised by that military despotism which ensured its fall.

CHAPTER IV.

Popular Courts held in the open Air—Signs and Tokens employed in the ancient Law—Symbolical Language—Record, or Evidence of Proceedings, by oral Testimony—Anglo-Saxon Charters—Consequences resulting from the Mode of Authentication by oral Testimony, and from the Manner of assembling the popular Tribunals.

WHILE the primitive customs of the Teutons prevailed, and they continued unaltered in some parts of England until within the memory of man, the popular courts, before described, were always held in the open air. The first violation of the general usage resulted from a capitulary of Charlemagne, which directs that a roofed building shall be constructed, wherein the public Mallum shall be held[a]. A sober and plausible reason is assigned for the regulation, and the Missus may have expatiated on the paternal care of the sovereign, anxious to protect the suitors from the inclemencies of the weather, from the burning rays of the sun, and the piercing blasts of the wind; but it may be doubted whether this enactment, which is contemporaneous with another, dispensing all freemen from attendance, excepting only the "Vassi" of the Count, and the Scabini, proceeded merely from a wish to consult the convenience of the people. Legislators often follow the maxim, that it is politic to have one reason to offer and another to conceal; and, without being too astute in search of the wiles of policy, it will not be considered as a very extravagant conjecture, that Charlemagne may have been willing to disperse the throng which hitherto had attended these courts, by substituting the solemn session within the walls of the Stadthouse, in the place of the warlike Council mustered in the field. Whether intended or not, this effect was produced. The popular assemblies, from being the Conventions of the people, became mere courts of Justice; and the nation, instead of joining the Priests and Nobles who deliberated in the Champ de Mars, only heard

Ancient popular Courts held in the open air. (See II., pp. 195–212.)

Custom altered by Charlemagne, who directed that the Courts should be holden in covered buildings.

[a] Caroli Magni Cap. II. A.D. 809, § 13.

Part I. Ch. IV.

of the resolutions which had been adopted by the Peers in the presence of the Sovereign.

Places of meeting: under ancient trees,

Religious feelings, no less than motives of convenience, seem to have been the cause that the popular meetings were frequently called beneath the shade of ancient trees, the objects both of worship and of veneration. The Oak of Guernica[1], yet flourishing in verdant age, saw the States of Biscay assemble under its branches for more than a thousand years; until the constitution of the Vascongados[2], which had been spared by the despotism of Austria and Bourbon, was destroyed by the liberality of the Cortes of Cadiz: and very many of the trysting places of the English Courts, were marked, in like manner, by the Oak, the Beech, or the Elm, the living monuments of nature, surviving through many a generation of the human race. Natural hills, or artificial tumuli, upon whose summit the Judges might debate, visible to the surrounding multitude, yet separated from the throng, were also appropriated to the popular assemblies. Such was the Mons Placitorum[3], or Moot-hill of Scone, the only portion of the royal domains retained by Malcolm[4], when he is said to have bestowed all his lands upon the Barons of his realm[a]; and such still is the Tynwald-hill[b] of Man. The Stannary court was summoned on the dreary summit of Crokentorre[5], where the seats,

on hills or tumuli,

[a] Laws of King Malcolm Mackenneth, c. i.

[b] From *Thing*, *Ting* (S.G. and Isl.), or *Ding* (Germ.), a Court of Justice, and *Völld*, a Hill. Of the word *Thing*, a term in frequent occurrence, Ihre gives the following etymology; *Tinga* est colloqui. Apud Ulphilam *Mathls* Forum est, *Mathlian* loqui. *Mallus* in Legibus Longobardicis nomen habet a *mäla* loqui, *mal*, sermo. *Sprache* et *Gespreche* in vetere Germania conventus publicos designabant, qui iidem Latine colloquium nominabantur. *Burspråk* apud nos erat Curia civitatum et concilium civium, a *språka*, colloqui. Sic Angli Gallique concilium maximum *Parliamentum* vocant, a *parler*, loqui. [*Tinga* is to converse. In Ulphilas, *Mathls* is Market-place, *Mathlian*, to speak. *Mallus* in the Lombardic Laws has its name from *mäla*, to speak, *mal*, a speech. *Sprache* and *Gespreche* in old Germany designated public meetings, and the same, in the Latin tongue, were called colloquium. *Burspråk* with us was the Court of the cities, and the council of the citizens, from *språka*, to converse. So the English and French call their greatest council a *Parliament*, from *parler* to speak.] The "*Bauersprache*" in Germany, is a declaration or presentment of local customs made by the Villeinage. The Guildhall of the city of Canterbury was anciently called the *Speech-house*. (Somner, Canterbury.)

(See II., p. 201.)

roughly hewn in the moor-stone, indicated the tribunal. Many of the earthworks, often supposed to be camps or military stations, were more probably intended for judicial purposes; at least, the entrenched Hill of Flicheham Burgh, where the East Anglian Hundred of Freebridge was holden, was of this description[a]: and if the intent of the ramparts were not known, the antiquary would have attributed the seeming fortification to the armies of the Briton, the Roman or the Dane. The Druidical Circles, as they are called, have an equal claim to be considered both as temples and as places of judicial conventions, where the priesthood offered the sacrifice and delivered the law; where the accused submitted to the fearful ordeal, and where the offender was punished for his crime. Runnymede, the field of council, where, in times of yore, the Anglo-Saxons were wont to meet and consult on the welfare of the state[b], may also be interpreted the field of mystery. And the laws which, down to the eleventh century, prohibited the Anglo-Saxon from worshipping the tree, the rock, and the stream or fountain[c], shew that the vicinity of the popular courts to these objects of the Pagan faith was not altogether an accidental coincidence.

in circles of stones,

or near rivers; all of which were places of heathen worship.

Assembled in the open day, the oral proceedings of the court followed the course of the traditionary law. "Amongst savage "nations, the want of letters is imperfectly supplied by the use "of visible signs, which awaken attention and perpetuate the "remembrance of any public or private transaction."[d] And the symbolical language, which the civilians derided and retained, was equally in use amongst the Teutonic tribes. Even after writing became known, the deed or record was often only collateral to the form and ceremony. Land was conveyed by the seisin given on the soil: or the turf or the stone, taken from the land and placed in the hands of the grantee, or laid upon the altar of the Church, effected the transfer of the territory, which these symbols represented[e]. The Charter was, in truth, only a memorandum that the investiture had been performed in the presence of the witnesses. Usufructuary interests were generally created by the delivery, in England, of a rod or branch of a tree; in Scotland,

Visible signs and tokens, their use in the Roman law.

Land conveyed by the delivery of earth and stone, of a rod or branch, &c.

[a] Blomefield, Norfolk, vol. viii. p. 419.
[b] Matt. West., 1215.
[c] Canons of Edgar, § 16. Canute, I. § 5.
[d] Gibbon, Decline and Fall, c. 46.
[e] Concilia, vol. i. p. 63.

Part I. Ch. IV.

of a straw[a]. It is important to remark that, in practice, these two sets of symbols, respectively representing the soil, and the productions of the soil, and respectively conveying the right of property and the right of usufruct, are seldom interchanged or confounded. Seisin is not given by the rod; nor is the customary estate granted by the delivery of the fragment or particle of the land[b]. These ceremonies correspond, in spirit, to the "Mancipation"[1] and "Tradition" of the Romans: the first of which transferred the "Dominium directum," or ownership of the soil; and the second, the "Dominium utile," conferring only a title of enjoyment, the ownership continuing in the state or sovereign[c]. Tradition was effected by the delivery of a symbol, the Mancipation, by a fictitious sale before five witnesses: but the right to the soil was vindicated by bringing a turf or glebe from the field or farm, and which was delivered to the person to whom the Prætor adjudged the possession; and the livery of legal seisin by the Roman Tribunal bears the nearest affinity to the forms of the Gothic law[d].

Mancipation and Tradition of the Romans.

Courts summoned by the delivery of a token, which was passed from hand to hand;

The general summons of the Gothic courts was effected by a process which resembles the gathering of the Clans of the Gael, when the fiery cross[2] made its circuit through their glens and wilds. Borne, by each Ceorl or Bonde, from dwelling to dwelling, over marsh and moor, the symbol, which was passed from man to man and from home to home, announced the approaching

[a] Martin, Western Islands.

[b] Some of the forms of investiture amongst the Teutons and Scandinavians, are given in Part II., *Proofs and Illustrations*, pp. 325, 326.

[c] ...uti prædia in Italico solo mancipi res erant; ita provincialia ante Justinianum nec mancipi habebantur. Nam cum tributaria ea essent, vel stipendiaria, non poterant mancipio a provincialibus dari. Usus duntaxat et fructus, seu χρῆσις eorum ad provinciales pertinebat: mancipium et proprietas populi Romani erat, Heineccius, Vocabularium Juris, &c. [Just as landed estates on Italian soil were "res mancipi"; so lands in the provinces, before Justinian, were considered "nec mancipi." For since they were tributary or rent-paying, they could not be given by mancipation by provincials. Only their use and enjoyment or χρῆσις belonged to provincials; the ownership and the property belonged to the Roman people.] Cod. Theod., lib. viii. tit. 12, LL. 4, 8, 9. See also Mr. Spence's Inquiry, pp. 32, 34, where the author has collected the authorities with his usual diligence and fidelity.

[d] Aulus Gellius, xx. 10. Burrow Laws, ch. 136.

session of the popular tribunal. A ponderous weapon[1], nearly like that which is called the "morning star," often given to giants in old paintings, was the warrant which convened some of the English Hundreds[a]. In Scandinavia, the token varied in form with its object. An arrow informed the people that the Næmda would sit in judgment on the murderer; from whence the Court also obtained the name of the "Orvarthing."[2] The Cross indicated that the precepts of the Church had been violated, and that the transgressors against the "Christendom's Balk" were to receive their punishment. An axe, or staff, denoted that the Tribunal would assemble in its usual course, and for the transaction of its ordinary business. Symbols, similar to those which required the suitors to attend the court, summoned the defendant to appear before them. The Deemster of Man sent his "Token," a fragment of slate or stone, to the defendant. Accompanied by the delivery of the arrow or the battle-axe, the verbal citation to appear in the Landthing of Norway was repeated by two Bondes, the "Stefnovitni,"[3] the witnesses of the summons, who were afterwards to testify that they had duly delivered their errand[b]. Corresponding with these "Stefnovitni," were the "good summoners," by whom the English Sheriff was directed to warn the tenant to appear in real actions; and an analogous office was performed by the Knights, who recorded that the Baron had been duly cited by the Viscount or the Bailli, according to the custom of Normandy[c]; and the writ, or written process, derived its force and virtue from the older custom and oral law. All the proceedings in these Assemblies participated of their native rudeness and simplicity. Scribes or Registrars were not required to attend the meeting of the Hundred or the Shire; the memorials of the Court were entrusted to the recollections of the "Witan," the Judges by whom the decrees were pronounced; and so great was the importance of their functions in bearing testimony, that their name may be considered as derived as well from their capacity of witnesses, as from their knowledge or learning[d].

of which the form was varied in Scandinavia, according to the peculiar objects of the Court.

Parties summoned to appear before the Court, by the delivery of similar tokens.

"Stefnovitni," corresponding to the "good summoners" of the English and Anglo-Norman laws.

Legal proceedings, wholly oral.

[a] Ormerod, Cheshire, vol. ii. p. 4.

[b] Arnesen, Islandske Rettergang, p. 428; and the Laws of Haco and Magnus. King, Vale Royal.

[c] Glanville, lib. ii. c. 11, &c. Grand Coustumier. See Part II., *Proofs and Illustrations*, p. 267.

[d] I owe this suggestion, like many others, to Mr. Allen. The root of *Wita*, or *Wite*, is the Gothic and Anglo-Saxon *Witan*, to know or

Part I. Ch. IV.

No legal records amongst the Anglo-Saxons.

Legal archives, in the proper sense of the word, did not exist amongst the Anglo-Saxons. On rare occasions, the verdicts of the Hundred or the Shire might be written in the blank leaves of the Missal belonging to some neighbouring Minster; but, though this mode of preserving the history of the transactions might be adopted, the document had no legal effect. It could not be pleaded; and the strict and proper mode of legal proof was by appealing to living testimony. If evidence was required of judicial transactions, the proof was given by the Hundred or the Shire in its corporate capacity; the suitors bearing witness to the judgments which they or their predecessors had pronounced, or to the acts which had taken place in their presence. An exception is found with respect to the instruments by which the dominion of landed property was transferred. The Landboc, or Charter, appears to have been considered as affording evidence which could be opposed to living testimony. High value was therefore attached to these instruments; and, though the title to real property depended mainly upon possession, still the Charters afforded so much protection, that, when they were outstanding in the hands of other persons, who were neither in possession of the land, nor had any legal claim thereto, the rightful owner was happy to be enabled to purchase the deeds by the payment of large sums of money. When the Landbocs were destroyed by accident, the Witenagemot, proceeding upon the petition of the landowners, might decree that new deeds should be made out; and if no transcripts remained, the Charters were re-written to the best of the belief of the Witan: and the legislature could further enact that, if the old documents should ever appear again, they should be void and of no effect[a]. It happened, not infrequently, that a hostile suit concerning land was terminated by an amicable agreement before the Witan[b], and such a compromise would be commemorated in a Charter, in which the suit was recited, and which became one of the title deeds. Hence the origin of the opinion amongst our common lawyers, that Fines for the assurance of land are older than the

Proof of legal proceedings given, by appealing to the testimony of living witnesses.

But the Landbocs or Charters admitted as proofs of title to land.

Purchased by the possessor of the land, when outstanding in the hands of other parties.

Compromises of suits recited in the Landbocs or Charters.

understand; and *Wita*, or *Wite*, is employed both for a Judge, a Senator, a Counsellor, and a Witness. (Lye.) The Echevins of the Vehmic, or Secret Tribunal of Westphalia, were also called *Wissende*. See Part II., *Proofs and Illustrations*, pp. 195–205, especially pp. 199, 203, 205, and note b.

[a] Hemingi Cartularium, pp. 66, 325. Monasticon, vol. i. p. 50.

[b] Hist. Eliensis, pp. 466, 473.

Conquest; which is substantially true, if we consider the purport and object of those instruments; though erroneous, if applied to a "Concord," grounded upon a writ of entry, and conducted according to the forms of Anglo-Norman jurisprudence.

The worth of the Charters naturally induced a great degree of care for their preservation; and about the eleventh century, a practice began to prevail of depositing them for safe custody in the King's Treasury, under the care of the "Bur Thegn," the "Cubicularius" or Chamberlain; or in the King's Chapel, where they were preserved, together with the relics, by the King's domestic Priests or Chaplains: and in these offices we discover the first traces of the establishments, which afterwards attained such importance, as the Exchequer and the Chancery of the Anglo-Norman Kings[a].

Landbocs deposited with the "Bur Thegn," the Cubicularius, or Chamberlain, in the "Hord" or Treasury (afterwards the Exchequer); or in the King's Chapel (afterwards the Chancery).

A depository of legal archives, so far as they related to land, was thus forming, but the testimony of the decisions pronounced in Courts of law, still rested on the oral evidence of witnesses. The principle of appealing to the Witan prevailed almost universally, and it continued long after writing became in more common use. They remembered or "recorded" the proceedings; and in all the ancient writers, the phrases, "making Record," or "bearing Record," signify the power of giving such testimony as, in that particular case, was final and incontrovertible, and against which no exception could be maintained. Thus, in Normandy, all matters which had taken place in the Court of the King sitting as Duke of Normandy, were "recorded" by his testimony, added to that of one other witness; or he might depute two other "Recorders" in his stead. Seven witnesses were required for the Record of the Exchequer, or of the Assize. In all such proofs, the author of the Norman Custumal never contemplated the production of a written roll or register as evidence of past proceedings. The persons who "made the Record," testified as to what they had heard, and what had been said; and by such testimony, the parties were to stand or fall[b]. When any distance of time had elapsed, such a mode of proof must often have been attended with considerable difficulty. John of Ibelin,

"Record," the testimony of witnesses, whose declaration was final and conclusive. "Records" of the King's Court in Normandy, of the Exchequer, &c.

[a] Hist. Ramesiensis, p. 458. Monasticon, vol. iii. p. 36.

[b] Coustumier de Normandie, chapters 102, 103, 104 and 107 of the printed editions. See Part II., *Proofs and Illustrations*, pp. 213–215, in which the passages here referred to are given from the St. John Manuscript, now in the possession of the Earl of Gosford.

Part I. Ch. IV.

therefore, the sage author of the Assizes of Jerusalem, advises the suitor to collect in Court as many of his friends as he possibly can, "and to pray them to be attentive to the words which are spoken "in the pleadings; to hear well and to recollect well, in order that "they may be able to record the plea when need shall require."[a]

Record of Court, according to the English law. "Record" of a Fine, made by the Judges and Four Knights, who were present when the parties entered into the agreement.

Record of Court, as understood by the ancient English lawyers, is no other than such a power of bearing testimony[b]. If a Concord was passed before the Justices in the Eyre, it was certified by summoning the Justices before whom the agreement was made, together with those discreet Knights who were present, and by whom the truth could be better known. Sometimes the Knights were sent, without writ, on behalf of the County, to the King's Justices at Westminster, to "make their Record," both of the plea and of the peculiar custom of the Shire; or to declare that no outlawry had been awarded against the supposed criminal.

Record of a suit in the County Court, by Four Knights, who were present at the plea, &c.

A suit in the County Court was authenticated in the same manner, by summoning the individuals, who, in the Saxon period, would have been designated as the Witan. The Record of the Constable of the Tower was his verbal statement of the essoin, by which the defendant excused his default. And the main distinction of the Record of the King's Court and the Record of inferior jurisdictions was, that whilst the first could give incontrovertible

[a] Assizes de Jerusalem, c. 45.

[b] Glanville, lib. viii. chapters 5, 6, 9, 10, 11. Bracton, lib. v. chapters 4 and 10. Placita apud Westm. Mich. 6 Ric. I. Placita apud Westm. Trin., &c. 5 John. See Part II., *Proofs and Illustrations*, pp. 215–218, where some other instances are given. The Latine men use *Recordor*, when they wil signifie to keepe in minde or to remember; in which sence the Poet said, "*Si rite audita recordor*" [*If I remember properly what I have heard*]. And after the same sence also doth our law use it. For Records be nothing else but memorials (or monuments) of things done before Judges, that have credit in that behalfe. And, therefore, where King Edward I. doth, in the beginning of the Booke called Britton, set foorth the Judges of his Courts, he saith of some that they should have authoritie of Record, and of others, that they shall beare Record; both which speeches do meane but one thing.... And we yet say in common speech, "such a man shall beare record of a thing," when we intend to say that he remembreth it, and can beare witnesse of it....This Record (or Testimony), is first contained within the breast of the Judge (as our law speaketh), and afterward committed to the Rolles, which are, therefore, figuratively called Records also, Lambard, Eirenarcha, bk. i. c. 13.

testimony of all matters which were brought before it, the Record of the latter was confined to peculiar cases and circumstances. Until the reign of John, the Record was "made" by the attendance of the Justices or Knights in person; but the practice gradually changed. The "Chirograph," engrossed by the Clerk, was produced as evidence of the fine, and a written memorial of the transaction, authenticated by the seals of the Knights, was transmitted to the Superior court, and received in the stead of their oral testimony[a]. This innovation was extended to many other proceedings, such as the verdicts of Juries, which were returned in the shape of written "Inquisitions": and this usage, by preventing the necessity of personal appearance at the bar of the court, produced considerable alterations, not only in the administration of remedial justice, but in the political Constitution. The parchment roll became the Record; and the word Record was soon appropriated so exclusively to the muniments of the courts, that, in more modern times, its original signification of oral testimony was almost wholly forgotten. Still it was occasionally employed both here and in Scotland. David the Second enacted "anent the Record of Sergeants and Mairs,"[1] that the Summons and Record shall be put in writing, if it please the officer, and he shall read the same, if he can, in plain court; otherwise, he may make the Record by word, in the best form he may[b]: and it is probable that the English "Record" might at one period be either oral or written, at the option of the court or party. The "Record" of the Justice of the Peace, which convicted the trespasser or the rioter, and against which no traverse was allowed, was merely his verbal testimony[c]; and the assertion, that a Justice of the Peace is a Court of Record in himself, merely arises from the misapprehension of the ancient term. In one instance, the ancient Record still exists. When any of the peculiar customs of the City of London are to be noticed by the superior Tribunals, they are not ascertained by reference to the rolls of the Court of Husting: no book or writing is consulted; but they are certified by the mouth of the officer, who hence is called the Recorder[d].

"Record," originally made *ore tenus* by the Recorders; but a written statement of their evidence, authenticated by their seals, afterwards substituted for their oral testimony. (See II., p. 217.)

Original signification of the term "Record" nearly forgotten;

retained in Scotland in the fourteenth century,

and also in the English statutes, authorizing Justices of the Peace to make the "Record" of forcible entries and riots.

Customs of London always testified; i.e. "recorded" by the mouth of the Recorder.

[a] See Writ of Recordari facias; Registrum Brevium, p. 5. Blackstone, vol. iii. pp. 34, 37, 195.

[b] Statute of David II., c. 51.

[c] 15 Ric. II., c. 2. 13 Hen. IV., c. 7.

[d] Year Books; Pasch. 26 Hen. VI., 15; 21 Ed. IV., 11. Burr.

Part I. Ch. IV.

The preference given to oral testimony, even when written documents could be produced, was not altogether without its reason. When writing was an art known only to the few, and the alphabet was a rare acquirement, the subtle clerk might easily produce his forgeries, without the hazard of detection; but the verification of the proceedings by the mouth of the witnesses, known men of established fame and credit, was much less liable to suspicion, or susceptible of falsification.

Technical forms and proceedings religiously adhered to by the Scandinavians.

The same causes which dictated the employment of the visible symbols of the law, induced the Teutons to attach the greatest importance to their technical forms and proceedings. Of these, the most numerous are preserved in the codes of the Norwegians, though some, of great singularity, are extant amongst the Anglo-Saxon customs. Every act by which an obligation was incurred, by which civil rights were acquired or created, which constituted a stage in the suit, or was connected with its process, required to be enounced in the phraseology, and accompanied by the rites, which immemorial tradition had prescribed. The plaint or appeal preferred to the court, the betrothing of the maiden, the legitimation of the child, the manumission[1] of the slave, all had their peculiar forms; and, with the nicety which afterwards characterized the Anglo-Norman law, the variance of a word, or the lapse of a syllable, annulled the entire proceeding. The Normans of Normandy inherited their proverbial love of litigation, so often the object of wit and satire, from the first followers of Hastings and of Rollo; and the subtleties of the Exchequer of Rouen were lineally descended from the wisdom of the Folkmoot of Drontheim[2]. Practice and experience could alone teach these forms; the important knowledge was not generally diffused amongst the people; and the lore was concealed, with jealousy, from the profane multitude, by the wise and powerful "Lawmen." Such was the efficacy ascribed to these mystic phrases, that words, which seemed spoken in sport or heard with inattention, the citation repeated as a jest, or the bridal pledge uttered by the child, were afterwards found to be invested with the rigid strength of judicial validity. Like the maxims of the law, many of these formulæ appear to have been originally framed in verse or metre, and some may be quoted, which still retain their poetical guise. In their substance, they seem to ascend into the age of Paganism;

Any slip or error in the forms annulled the proceedings.

i. p. 248. Brook, Title London.—Roll Abr., 579, 580. Viner Abr. Customs of London, 2 Inst. 126.

and the magical powers assigned to the ancient legal sentences, perhaps evince their connexion with the ancient mythology and the heathen creed[a].

To dilate on the manners and usages, however singular or interesting, of ancient times, would lead me too far from my present inquiry; and I have, therefore, merely noticed some of those circumstances relating to the modes of proceeding, which had an evident influence upon the essential portions of our constitutional jurisprudence. The principle of entrusting the "Record" of the law to the breasts of the ancient popular members of the tribunals, belongs to this class; it worked incessantly on the law. Instead of opening the book to determine the contested custom, instead of reading the protocol, to ascertain the facts of the transgression, the King's officers were compelled to appeal to the virtual delegates of the people, and to be confronted on all occasions by their authority. The popular branch of the remedial tribunals could not be lopped off; and the Scabini, or the Næmda, or the Jurors, from being the witnesses of the law and the fact, became the Legislators. Publicity could not be avoided, nor concealment obtained; and the people obtained that participation in judicial proceedings, which affords the most effectual counterpoise to the discretionary authority of the Court, so dangerous to freedom, and yet so indispensable for the preservation of good order and the furtherance of justice.

Consequences of the prevalence of oral testimony.

The mere accidents of locality or separation, of distance or juxtaposition, often produce the most important consequences. If, under our Edwards, the Procurators of the Capitular and Parochial Clergy had resorted to the Palace and Abbey of Westminster, the deputies of the inferior orders of the hierarchy would probably have become as integral an Estate of Parliament as the representatives of the laity; but, holding their Convocation in the New Temple or the Cathedral of St. Paul's, they were confirmed in the character of a distinct body. All the causes which gave them a separate interest from the secular members, acted with tenfold vigour when aided by a visible separation, and they ceased to be numbered amongst the constituent portions of the great Councils of the realm. By assembling in the open air, the suitors of the Hundred and the Shire Courts retained an importance which they would have lost had they been confined within the limits of the Moot-hall; and it is

Consequences resulting from the custom of holding the County Courts in the open air.

[a] See Part II., *Proofs and Illustrations*, pp. 185–188.

Part I. Ch. IV.

not too much to assert, that the present political influence of the body of the people is, in great measure, derived from the mode and manner of their meeting. William the Conqueror, by enacting a law like the capitulary of Charlemagne, would have more effectually checked the growth of the influence of the English people, than by erecting all the massy dungeon towers, whose ruins are yet frowning over the land. If, instead of causing the men of Kent to assemble on the wide Heath of Pennenden[1], to witness the discussion of his pleas, he had commanded those who were selected and chosen to testify on behalf of the county, to meet in the Speech-house of Canterbury, the elections of Knights of the Shire would now, at this day, be made by a close Corporation. The records exist which shew, that as the suffrage of the Borough belonged to the delegated bodies, acting on the part of the community, so the choice of the Representative of the County, or rather of the County Court, belonged to the Magnates or their Delegates, few in number, high in station, and without any commixture of the minor suitors, who continued spectators, until they acquired a deep and general interest in the proceedings of the Legislature, and in the affairs of the community. They then became loud and active partizans; they were on the spot, they mingled with their superiors, they asserted the same rights: but the "great, outrageous and excessive number of people of small "substance and no value," would never, in the angry words of the Statute, "have pretended to a voice equivalent with the "most worthy Knights and Esquires,"[a] if the English Sheriff had been enabled, like the Mayor, to close the door upon the unwelcome intruders.

(See Chap. VIII.)

[a] 8 Hen. VI., c. 7.

CHAPTER V.

Ecclesiastical Establishments of the Anglo-Saxons—Destruction of the British Hierarchy—Prevalence of the Druidical Religion in Strath Clyde and Cumbria, and also amongst the Anglo-Saxons of Northumbria—Secular Services due from the Lands of the Clergy—Ethelwulf's Grant of the Tenth Part of the Land of his Kingdoms—Spoliations of Church Property—Primacy of Canterbury over the Welsh Bishops—Great part of modern Scotland originally included in the Province of York—Councils, how held—Degeneracy of the Anglo-Saxon Church—Secular Employments of the King's Priests or Clerks—The Chancery.

Subsisting through all the storms of Barbarian invasion, the ecclesiastical policy of the Continent was unaffected by the vicissitudes which placed the diadem of the Cæsars on the brows of the Goth, the Frank and the Lombard; and the lines of the Prelacy of the ancient churches of Spain, and Gaul, and Italy, continued unbroken and undisturbed. But, with the exception of one venerable Fane, situated in a Kingdom which was not conquered by the Anglo-Saxons until after their conversion to Christianity, no ecclesiastical foundation existed in England, connected with the British Church, or whose members could deduce their canonical succession from the British hierarchy. British antiquity could be alone asserted by the Monks, who watched the tomb of Arthur, in the fabled Isle of Avalon, and whose legends, exhibiting a strange and mysterious union of mythology, devotion and romance, perpetuated the fictions, which fed the hopes of the vanquished Britons with visions of revenge. Glastonbury claimed the privileges, which had been granted to Ynesuuitrin[1] by the ancient Monarchs[a] of Domnania[2]; and so late as the twelfth century, the inmates of the monastery produced the Charters, subscribed with the names, stigmatized as barbarous by the fastidious taste of the Anglo-Norman historian, and confirmed,

None of the Anglo-Saxon ecclesiastical foundations derived from the British hierarchy,

Glastonbury excepted.

British Charters of Glastonbury, quoted by William of Malmesbury, and confirmed by Hen. II.

[a] Malmesburiensis, de Antiq. Glaston. Ecclesiæ, p. 308. [Malmesbury, On the Antiquities of the Church of Glastonbury.]

Part I. Ch. V.

as monuments of venerable antiquity, by the Anglo-Norman King[a]. None of the other religious foundations of England asserted a similar descent; and the Prelates, who filled the Episcopal Sees of the States included in the Heptarchy, even of those which were last acquired from the Britons, would have rejected any title, save that which was derived from St. Augustine and his disciples. Acknowledging no other founders but the Missionaries who were despatched by the Roman Pontiff, and by whose exertions the Anglo-Saxons were received into the pale of Christendom, they claimed no kindred with the more ancient Church, which numbered amongst her sons the protomartyr of Britain. Between the extinction of the British Kingdoms and the arrival of St. Augustine, the British hierarchy ceased to have any recognized existence amongst the mixed inhabitants of the subjugated realms. The ecclesiastical government was destroyed with the national independence; the Chieftains of British race either fled or perished in the field, and the greater portion of the British people, who constituted the villeinage, relapsed into those errors from which they had been imperfectly reclaimed.

Extinction of the British Hierarchy in the Anglo-Saxon Kingdoms.

That such an apostasy took place amongst the "Welsh," or British subjects of the Anglo-Saxon nations, will appear probable from the following circumstances. According to the discipline which prevailed throughout the Empire, when the ecclesiastical establishment of the Romanized Britons was first organized—and there is no reason to suppose that any departure from the general model took place in the Roman Provinces of this island—the metropolitan or mother church was the only one which possessed any endowment. Constituting one jurisdiction, under one Pastor, the Diocese was the "Parochia" of the Bishop, who appointed the Presbyters to officiate in the various districts, as appeared most required by the spiritual wants of the congregations. All the property of the Church, whether arising from tithes, from land, or from voluntary oblations or offerings, formed a common fund, of which that portion which remained, after providing for the charges of divine service and the maintenance of the poor, was distributed amongst the Clergy[b]. Upon the conquest of each British city by the Anglo-Saxons, the ruin of the Cathedral would necessarily destroy the whole dependent priesthood, destitute of

Ancient organization of the Church, the Diocese, the Parish of the Bishops, who appointed the Presbyters to officiate in the rural congregations; the latter being destitute of any specific endowment. The property of the Diocese formed a common fund, out of which the Clergy were maintained.

[a] See Charter of Hen. II., printed by Hearne, from the Chartulary of Glastonbury, Hemingi Cartularium, App. 603.

[b] Bingham, Origines Ecclesiasticæ, bk v. ch. 6.

any permanent glebe or domicile in the districts of the surrounding country, and with no other followers but the husbandmen, the cultivators of the soil, scattered under the authority of their heathen conquerors. Even in this disastrous situation, a firm belief might have preserved a wreck of Christianity; but its doctrines do not appear to have been cordially received by the ancient British Tribes, or to have become the national religion. Amongst the Roman Colonists and the Romanized Britons of the higher ranks, the Gospel was preached with effect. Alban sealed his faith with his blood; nor did he alone obtain the crown of martyrdom: and the citizens of London and Verulam[1] may have profited by the zeal of Eleutherius[2], and the piety of Lucius, the British King[a]. But the country was still unconverted; and though the bloody sacrifices of the Druids had brought down the anger of the Romans upon them, their mysteries, purified by the abolition of a savage ritual, were perpetuated by the Order. Taliesin hardly conceals his belief in the religion of his forefathers; and the Druidical worship, which was still recollected in Strath Clyde and Cumbria, was so strong and vigorous on the opposite shores of Deira, that the British inhabitants not only preserved their priesthood, but had induced the Anglo-Saxon conquerors to embrace their faith; for the name of Coifi, the Pontiff[b], by whose persuasion Edwin embraced Christianity, is no other than the title of the Chief of the Druids[c]. Whether the Northumbrians had entirely abandoned their Teutonic creed, or whether they had merely amalgamated their pristine mythology with the lessons of the worshippers of the oak, cannot be ascertained, though the latter supposition has most probability, for the early paganism of the Northmen was tolerant; or rather they seem to have felt its vagueness, and to have yearned for any change. When they associated with the Vendic[3] tribes, they adopted the many-headed idols, Prono, and Radegast, and Siva, whom the Sclavonians seem to have brought from the mountains of Hindostan; and the same flexibility of creed, which allowed

Christianity not generally received by the British Tribes; but probably confined to the Romans and Romanized Britons of the Municipia and Colonies.

Druidical faith subsisting in Strath Clyde and Cumbria, and amongst the mixed population of Britons and Anglo-Saxons in Northumbria.

Coifi, Chief of the Druids of Deira, A.D. 627.

Flexibility of the Northern polytheism.

[a] A.D. 180. Lucius Britanniæ Rex, missa ad Eleutherum epistola, ut Christianus efficiatur impetrat, Bedæ Chronicon. Hist. Eccl., lib. i. c. 4. [Lucius, King of Britain, having sent a letter to Eleuther, obtains his request that he may become a Christian.]

[b] Hist. Eccl., lib. ii. c. 13.

[c] In Gaelic, *Coivie*, *Cuimhe*, or *Choibidh*. See Jamieson, Scottish Dictionary; Supplement.

Part I. Ch. V.

Redwald to raise the altar of the Eucharist[a] in the structure where he propitiated his demon deities, would easily induce the Anglo-Saxon to unite the worship of Thor and of Tarannis, the Teutonic and the Celtic Thunderer.

Founded, therefore, in a community, in which there were few who had any recollection of Christianity, and those in the humblest classes, and deprived of their hierarchy, the temporal establishment of the Church was entirely Anglo-Saxon, and the organization of its Prelacy was wholly of new introduction. It was a National Church, in every sense of the word; for the few individuals of foreign origin, who appear in the very early Fasti of the Northern Sees, scarcely form an exception of any moment in our ecclesiastical history. A Bishop was first appointed for each people, or for each dominion, and the limits of the State became the boundaries of the Diocese. Large endowments of land accompanied these foundations. Ethelbert surrendered his own palace and lands to St. Augustine. Selsea and a considerable portion of the Isle of Wight were granted to the first Bishop of the South Saxons. The zeal which prompted these grants increased rapidly. But the liberality of the Anglo-Saxon Monarchs did not lead them to destroy the services due to the State. They maintained their royal pre-eminence; and they provided for the religious instruction of the people, without impairing the resources of the community.

Foundation of the national Dioceses of the Anglo-Saxons;

their munificent endowments.

Wihtræd, King of Kent (700), and Ethelbald, King of Mercia (742 and 749), discharge the Church from secular exactions, i.e. the payment of rents in kind, &c.; but reserve and enforce the performance of the Trinoda Necessitas; viz. Brycg-bot (the tax for the reparation of bridges and highways); Burh-bot (tax for repairs of walls and fortresses); and the Fyrd, or military service.

Wihtræd of Kent and Ethelbald of Mercia, declare that they were anxious to purchase the remission of their sins by the good work of relieving the churches and monasteries of their Kingdoms from all secular exactions, works, rents and tributes. But by these exactions were intended the farm or rents in kind, the ale, the corn, the cattle, which were due from the land to the "Theode Hlaford," the Sovereign of the people, from the lands which had been his demesnes, as well as the services of building and repairing the King's mansions, specified in the British laws. But whilst they abandoned their peculiar sources of opulence, they did not necessarily surrender the rights of the State; and the decrees of Ethelbald, which recite and explain the Kentish Charter, reserve, in the most express terms, the three important duties, in which all the people were bound to share, when enjoined by the King's edict, command, or summons. The payment of the imposts required for the repairs of the bridges and highways; the

[a] Hist. Eccl., lib. ii. c. 15.

contributions for keeping up the walls and fortifications of the strongholds; and the military services required for the resistance of the enemy, and the defence of the Kingdom[a]. Few grants were ever made to the Church without the reservation of the "Trinoda Necessitas"; and sometimes, instead of leaving the military contingent in uncertainty, the number of vassals and "shields," which the Abbot was to send forth to the wars, is specifically defined[b]. In such a case, the land was held by military tenure. Ethelred, the Ealdorman of Mercia, and who, under that title, exercised the regal authority, adds a fourth condition, in his grant to the monks of Berkeley; they were to be taxable, with the other inhabitants of the district: and the burdens of entertaining the King's hunters and falconers, and of entertaining those uninvited guests who were quartered upon the monasteries by the Sovereigns, and known by the name of "fæstingmen,"[c 1] are further to be added to the enumeration of the services due from the monasteries of Mercia and Kent, and perhaps of the other Anglo-Saxon Kingdoms.

Military services sometimes defined by a statement of the number of "Vassals (or Thanes) and shields," which the Prelate was to furnish in respect of his land.

Ethelred, Sovereign, or Ealdorman of Mercia, declares that the Monks of Berkeley shall be taxable with the other inhabitants of the district.

King entitled to quarter his Hunters, Falconers and followers, upon the monasteries.

From these, or equivalent charges, the Priesthood of the Roman Empire were, or claimed to be, exempted in a great degree. Constantine and Constantius had excused the ecclesiastics from

[a] Charter of Wihtræd, dated "Sexto die Aprilis, anno regni nostri octavo, indictione duodecima, in loco qui appellatur Cylling," Concilia, vol. i. p. 63. [On the 6th day of April, in the eighth year of our reign, in the twelfth indiction, in the place which is called Cylling.] Acts of the Council held at Clovesho, A.D. 742: "Præsidente eidem Concilio Æthelbaldo Rege Merciorum cum Cuthberto Archiepiscopo Doroberniæ, cæterisque Episcopis simul assidentibus," Concilia, vol. i. p. 86. [Æthelbald, King of the Mercians, presiding over the same Council, with Cuthbert, Archbishop of Canterbury, and the other Bishops present with him.] Charter of Ethelbald: "Peracta A.D. 749, indictione secunda, in loco celebri cujus vocabulum est Godmundeslæch, anno 33° Æthelbaldi Regis," Concilia, vol. i. pp. 100, 101. [Drawn up A.D. 749, in the second indiction, at the well-known place, the name of which is Gumley (?), in the 33rd year of King Æthelbald.]

[b] Privilegium Kenulphi pro Ecclesia Abbendoniæ, A.D. 821, MS. Cott. Claudius B vi, f. 9. [The privilege of Kenulph for the Church of Abingdon.] See Part II., *Proofs and Illustrations*, p. 304.

[c] Charters of Burhred, Wiglaf, and Ceolwulf, Kings of Mercia, A.D. 855, 836, 875, Hemingi Cartularium, pp. 31, 47, 57. Charter of Egbert, A.D. 823 (828), Textus Roffensis, 97.

Part I. Ch. V.

Continental Clergy, under the lower Empire, exempted from similar burdens;

the "Metatum" and the "Paraverda," the obligations of entertaining the soldiers, harbingers, and officers of the Emperor, and of furnishing horses and vehicles for the public service; the first of which duties, under the Frankish Sovereigns, was known by the name of the "Mansionatica" or "Parata." A partial revocation of this immunity was made, or rather attempted, by other Emperors: yet it seems to have subsisted, either from the indulgence of the public functionaries, or from a tacit repeal of the unfavourable laws; and the privileges of the Clergy were renewed by the capitularies, which followed and adopted the Roman legislation[a]. Charlemagne strictly forbade the Dux, the Castaldus[1], the Centenarius, the Huntsman, and the Falconer, from oppressing the churches and monasteries; and the enumeration of the exactions from which the Clergy were relieved in France, shews the extent of the burden to which they were liable, under the less indulgent Sovereigns of England. Hence the loud complaints of St. Boniface, who exclaims with much anger, that in the whole Christian world no such servitude was imposed upon the Church, as amongst the English nation[b]. Nor were these expostulations entirely without effect; and the apprehensions or the piety of the Sovereigns extorted many special exemptions, derogating from the general law of the land, according to which law, the lands possessed by the Clergy were liable to the same public services as the rest of the community[c]. Of these exceptions, the most extensive resulted from the grants made by Ethelwulf, who bestowed one-tenth part of the land in his Kingdom of Wessex, and in its dependencies, Kent and Sussex, upon the servants of the altar, or for the sustenance of the indigent[d], discharged from every territorial tax and duty.

which exemptions were renewed by Charlemagne.

St. Boniface, Bishop of Mainz, complains of the "servitude" of the English monasteries, A.D. 745.

Ethelwulf grants one-tenth part of the land in his Kingdom of Wessex, for pious uses, A.D. 855;

[a] Cod. Th., lib. vii. tit. 8; de Onere Metati, lib. viii. tit. 5; de Cursu publico, lib. xvi. tit. 6; de Episc., lib. viii. x. xiv.; Cod. Justin., lib. x. tit. 41; de Metatis, lib. xii. tit. 51. Epistola Karoli Magni de Pace Ecclesiarum Dei, A.D. 807. Capit., lib. xi. § 16.

[b] Epistola Bonifacii Archiepiscopi Maguntini ad Cuthbertum Archiepiscopum Cantuariæ de corrigendis vitiis Anglorum, Concilia, vol. i. p. 93. [The letter of Boniface, Archbishop of Mainz, to Cuthbert, Archbishop of Canterbury, concerning the correction of the faults of the English.]

[c] Wilkins, Concilia, pp. 63, 100. Grant of Ethelred, Dux or Ealdorman of Mercia, to the Abbot and Monks of Berkeley, A.D. 883. Hemingi Cartularium, p. 103.

[d] Charter, dated A.D. 854. "Die vero Paschali in palatio nostro

In the words of the ancient chronicle, "he enfranchised one-tenth "part of his Kingdom from all royal tribute and service, for the "honour of God, and the salvation of his own soul." Ethelwulf, with the consent of the Bishops, "Comites," and great men of his Kingdom, without whose assent no royal domain could be alienated[a], made this grant on his return from Rome, where he had induced the Pontiff to crown and anoint the young Alfred as his destined successor; and it has been considered as the legislative enactment by which the lands were first subjected to the payment of tithes to the Clergy[b]. But the right of the Church had already been recognized, in the most unequivocal manner; and the grants, many of which are extant, do not afford any voucher for the opinion which Selden[1] erroneously entertained. The general Statute expressly points out a decimation of the land by metes and bounds, to be held free from all secular services, exonerated from all tributes to the Crown, and from the charges to which, of common right, all lands were subjected, namely, the "Fyrd," the "Brycg-bot," and the "Burh-bot"; and this exemption was made, to the end that the grantees might sedulously and without intermission, offer up their prayers for the souls of Ethelwulf, and of those who had concurred in the donation; the land was, therefore, to be held in Frank-almoign. Proceeding upon his general enactment, Ethelwulf carried his intentions into effect by the specific endowments which he conferred upon the various churches and their ministers, of lands which may be termed ecclesiastical benefices, rendering no service except at the altar. By some historians the grant has been construed into an enfranchisement of all the lands which the Church then possessed, an interpretation not altogether void of probability; yet, if it be adopted, we must admit that the exoneration only affected the lands which the Church possessed when the decree was made; it could not extend to the lands granted at subsequent periods with the reservation of the Trinoda Necessitas; and at the period of the Conquest, a large, if not the largest portion of the church property, was held

not a grant of tithes, as erroneously supposed, but a grant of the tenth part of the land by metes and bounds, free from the Trinoda Necessitas.

quod dicitur Wiltun." [On Easter Day in our palace which is called Wilton.] Monasticon, N.E., vol. i. p. 514. Sax. Chron., A.D. 854, 855, 856, p. 94. Simeon Dunelmensis, A.D. 854, pp. 121, 140. Malms. de Gest. Reg., lib. ii. c. 2. Matt. West. A.D. 857. Flor. Wigorn., A.D. 855. Asser, A.D. 855. Ethelwerd, p. 478.

[a] Concilia, vol. i. p. 178. [b] Selden, The Historie of Tithes.

Part I. Ch. V

like the domains of the secular Lords, the Prelates sending forth their vassals to the wars, and contributing their due proportion to the Treasury of the Sovereign.

Donations of the Anglo-Saxon Kings derived from two sources: I. demesne lands, II. common lands of the Townships, &c.; which, being granted with the Tenants settled on the appropriated tenements, became new Townships.

The sources, from whence the munificent donations of the Anglo-Saxon Kings were derived, seem to have been two-fold: as the first, we may reckon the demesne lands, to which the Saxon Kings had succeeded in the right of the British Reguli. The second is more obscurely indicated; but it appears to have existed in the powers assumed by the King and the Witan, of granting a part of the common lands of a Township, together with the "Manentes," or "Bondes," who had settled upon the appropriated tenements, and that, in such case, the grant was a transfer of the superiority; by which means, each portion so severed became a new Township. Ethelwulf's grants were not always made directly to the Church; but the land being assigned, in the first instance, to the "Minister" or "Thane," with the power of naming his "heir," an expression which must be understood according to the Roman and not the English law; the grantee of the Crown then transferred the property to the Church, either by a donation, or by his will. Thus, in the instance quoted from the muniments of Rochester[a], the Thane—perhaps a married Clerk, for the "Mass-Thane"[1] and the "World-Thane" equally bore the same title—bequeaths the land to his wife, "to use for all her days," with the reversion to the Cathedral. There may have been an implied condition in the grants of Ethelwulf, that the first donor should execute the pious intention which is specified in the preamble; and, compared with the permanent interest of the ecclesiastical corporation, the life-estate may have appeared to be of little import. But conveyances, made by grant from the King to the Thane, and from the Thane to the Church, were very frequently in use: and this mode of transfer was probably the result of some incident of tenure; possibly the land was originally held by "folkright," and then not susceptible of alienation from the heir, and the owner, by surrendering it to the King, and taking back a new estate, acquired a power of disposition which did not exist before.

Mode of making donations, by grant to a Thane, who then transferred the land to the Church; sometimes with a reservation of life interests.

Conjecture that in some cases the land held by "folkright" may have been surrendered to the King, in order that the owner might receive the land under a new tenure, with power of alienation.

Adilberga[2], whilst her husband, Ethelbert, was still a heathen, had already re-established the deserted Church of Saint Martin, situated to the east of the City of Canterbury, and the hymn and the prayer were again heard within its re-consecrated walls.

[a] Textus Roffensis, p. 102.

The existence of the places of Christian worship facilitated the restoration of religion. Augustine, by virtue of the royal grants, obtained possession of the churches of Roman fabric[a], which had been abandoned to decay, but these were few in number, and new fabrics were speedily reared, humble and simple, and adapted to the wants of the people. The term "Getimbrian"[1] indicates the materials of which the Anglo-Saxon "Minsters" were constructed. Frequently the building itself was raised and dedicated before the grant was made; and the lands were then conveyed to the servants of the Lord therein ministering. The Community was created by the association of the brethren: their incorporation and the right of perpetual succession resulted from the nature of the institution; and, until the fifteenth century, it was never thought necessary to confer these privileges by the express clauses of a Royal Charter. Splendid endowments were bestowed upon all the monasteries and cathedrals, the parochial clergy slowly acquiring an independent establishment. In the eighth century, according to the testimony of Bede, none yet existed; for the missionary itinerancy, which he describes in very forcible terms, seems incompatible with the existence of a settled and located[b] priesthood, at least in Northumbria. Theodore of Tarsus[2], however, had attempted to create this order; and he may have succeeded, to a partial extent, in the southern and more cultivated portion of the island. Egbert notices the existence of churches, which had already obtained an endowment of tithes, distinct, as it should seem, from the Cathedral; and he provides, that these original foundations should not be deprived of their dues in favour of new places of devotion[c]. Every church was to be endowed with one entire "Mansus," or as much land as was usually held by a Ceorl or customary tenant; but for which glebe no secular service was to be rendered: nor was the Priest liable to any tribute or taxation, in respect of tithes, oblations, or other property purely spiritual. For any other property or lay fee, which he might possess, he was to render all due services to his Senior, Ealdorman or Lord: the Canon of the eighth

Roman churches still standing when Augustine first reached England.

Anglo-Saxon churches, how built and founded.

Parochial clergy not established throughout England in the eighth century.

Canons of Archbishop Theodore indicating a partial Establishment in the south of England.

Egbert, Archbishop of York, regulates the foundation of parish churches, A.D. 750.

[a] Hist. Eccl., lib. i. c. 22.

[b] Hist. Eccl., lib. iv. c. 27. Cawdrey, Discourse of Patronage, ch. ii. p. 8. Selden on Tithes, ch. 9. Bingham, bk v. ch. 6.

[c] Excerptiones Divi Egberti[3] Eboracensis Archiepiscopi, §§ 24, 25, Concilia, vol. i. p. 103. [Excerpts of Egbert, late Archbishop of York.]

Part I. Ch. V.

century describing the exemptions of the Clergy, as well as their liabilities, almost in the language of the Parliamentary subsidies[a]. The Canons of Egbert were promulgated only for the province of York, or, in other words, for the Kingdom of Northumbria; but it is probable that this was the law throughout England, until it was modified by Edgar and Canute[b], whose statutes allowed the Thane to endow a church, situate upon his Bocland, with one-third of the tithes, if a burial-ground was annexed thereto; but if it had not a burial-ground, then he was to continue to pay tithes to the Mother-church, and to provide for the Priest out of the remaining nine parts. These regulations seem to relate respectively to the foundation of new parish churches and of new private oratories. On the creation of a new Manor, by severing it from a larger Township, it would naturally become expedient that the inhabitants of the subdivision should have a place of worship of their own; and the desire, that the civil and ecclesiastical authorities should be concurrent, would incline the "Landlord" to endow the new foundation, a power which was thus allowed, with some attention to the rights of the existing incumbent. In the second case, while the law licensed the Noble to found a private oratory, it prevented him from bestowing the wages of the parish-priest upon a domestic Chaplain.

Laws of Edgar and Canute, allowing the appropriation of tithes to new parish churches, but prohibiting such appropriation to domestic chapels.

In the Carlovingian empire, the Ecclesiastics were universally governed by the Roman law. When the Frank received holy orders, he ceased to be subjected to the jurisprudence of his ancestors. The Salic or Ripuarian customs no longer protected or coerced him. He cut off his long hair, the mark of freedom and nobility; the penalty of excommunication was denounced against the Clerk who refused to comply with the Canon; and the clerical tonsure was the outward sign of the alteration of his civil rights, consequent upon the adoption of the servant of the altar into a new community[c]. The written jurisprudence of the Theodosian Code[1], or of those extracts and abridgments which supplied its place, became the personal law of the Priest. This change, however, was not in consequence of any subordination

Continental Clergy, governed by the Roman law, the "Barbarian" losing his national law by ordination.

[a] Grant of the ninth, 25 Ed. I.; Parliamentary Writs, vol. i. p. 62, No. 42, &c.

[b] Edgar, I. § 11. Canute, I. § 11.

[c] Dubos, Établissement de la Monarchie Françoise dans les Gaules, vol. iv. p. 407.

to the Bishop of Rome; but because the main body of the Clergy was first composed of the ancient inhabitants of the country, of those individuals who possessed the rights of Roman Citizenship, and, by their birthright, were entitled to be judged accordingly; and when others, of Barbaric race, were gradually aggregated to the Roman Hierarchy, it seemed to be reasonable that all the members of the Priesthood should be governed by one jurisprudence, in respect of its civil rights, though not by reason of their connexion or communion with the Roman See. Amongst the Anglo-Saxons, where the old succession was entirely interrupted, this consequence did not take place; and the Clerk and the layman were alike governed by one code, and subject only to one jurisprudence, except only as to disputes between the priesthood; which, in conformity with the ancient Canons, it was thought more seemly to refer to an ecclesiastical tribunal. But, whatever may have been the extent of this internal jurisdiction, the claims of clerical privilege and immunity, which, in after times, were arrayed so proudly against the secular authorities, did not exist. The Bishop was deprived by the authority of the Great Council of the Nation; and the Priest who had offended against the law was degraded from his Order, surrendered into the hands of justice, and condemned to expiate his crime by the ignominious punishment which awaited the meanest offender[a]. Yet, notwithstanding this rigid justice, the Clergy enjoyed unbounded reverence and respect. The Anglo-Saxons placed a most extraordinary degree of confidence in the Clergy, when they were called upon to give that species of testimony, which, as we have before noticed, was resorted to, when direct evidence could not be obtained; the compurgatory oaths of the Priest, the Deacon and the Monk, if the latter belonged to an inferior order of the hierarchy, being respectively equal to those of one hundred and twenty, of sixty, and of thirty Ceorls or Bondes, and probably of the equivalent numbers of Eorls and Sithcund men. A Bishop had equal dignity in the State with an Ealdorman or an Earl, his "word," or testimony, like that of the King, was conclusive in itself, and did not require to be supported by the oaths of Compurgators[b]; and the Mass-Thane, the servant of the altar, had the same honour and degree, as the

Anglo-Saxon Clergy retain their national laws, and are subjected to the secular tribunals.

Rank of the Clergy: value of their compurgatory oaths (see above, p. 10).

Bishops ranked with Ealdormen; Mass-Thanes (i.e. Priests) with World-Thanes (i.e. Knights).

[a] Alfred, § 21. Hist. Eliensis, p. 482.

[b] Dialogus Egberti; Concilia, vol. i. p. 82. Alfred, § 15. Wihtræd, § 10.

Part I. Ch. V.

World-Thane, with whom he was ranked in the scale of the Community.

Privileges of the ecclesiastical edifices.

Affording a sanctuary to offenders, the sacred edifices themselves were not to be profaned by force or violence. Any offence within the walls of the head Church or Cathedral was visited with that increase of penalty or punishment, which resulted from breaking or infringing the "Peace of the King"; homicide, there committed, was inexpiable, no blood-fine could be accepted; and unless the King pardoned the offence, the criminal forfeited life and land.

Civil immunities granted to the possessions of the Clergy.

In many places it is observed in the ancient Custumal, that the Bishop has the privilege of the Hundred[a]; that is to say, the Bishop's Township was, like the King's Town, separated from the Hundred, and governed by a Court of its own, equivalent in jurisdiction. This was also the case with most of the lands of the great monasteries; not as an ecclesiastical immunity, but as a favour, specially conceded to the Church by the charter of the King.

Origin of the Palatine jurisdiction of Ely.

Edgar thus created the Palatine privileges of Ely, by granting, though not gratuitously, to the monastery, all the rights of the Crown within the two Hundreds of the Isle, and that no one within its bounds should have any jurisdiction except St. Etheldreda[b1].

Privileges granted to the Townships, &c. of the Clergy, which gave them a separate jurisdiction, in the nature of those enjoyed by the King's Burghs.

Sometimes these special exemptions resulted from the clause, that the lands should not be subject to the summons or exactions of the King, the Earl, the Sheriff, or the Hundred; sometimes by bestowing, in express terms, the power of taking cognizance of those offences which peculiarly belonged to the King's Court, and for which he received the fines. All these various privileges, of which the general effect was to concentrate the general powers of jurisdiction, have their parallel in the franchises of the King's Burghs and Demesnes, and, like the latter, they afterwards became the foundations of the rights of many of our municipal corporations.

Temporalities of Durham created by a dismemberment of Northumbria. That Kingdom divided into Earldoms, about A.D. 950.

The more important privileges of Durham resulted from the dismemberment of the Kingdom of Northumbria[c]. Oslac became the Earl of modern Yorkshire and its dependencies. Oswulph obtained the territory north of the Tyne; and the domain between the Tyne and the Tees, then confirmed to St. Cuthbert, however it may have been obtained, was held by the Bishop in dependence upon the Crown; yet with

[a] Alfred, § 5. Edward and Guthrum, § 1. Canute, I. §§ 2 and 3. Textus Roffensis, p. 46.

[b] Liber Eliensis, p. 491.

[c] Chronicle of Durham; Monasticon, vol. i. p. 235.

the enjoyment of the privileges of Sovereignty: the dominions of the Prelate being exactly in the situation of one of the smaller States, such as Cumberland or Lothian, which were ruled by Kings or Princes, acknowledging the Imperial authority of the Bretwalda, without being deprived of the powers of government within their own boundaries. Great desire was evinced by the Clergy to acquire land, not only by gift, but by purchase; and even in many charters of donation, we find that some price, though probably less than the real value, was paid to the donor. The Histories of Ramsey and Ely[1], the most valuable of their kind, furnish many examples of these transactions, and of the anxiety shewn by the Abbots to obtain real property for the use of their communities. They were always on the watch to conclude a bargain; and their own statements afford full proof, that, in their cautious dealings, the half-inebriated Thane was easily induced to enter into engagements for the sale of his inheritance, which he sorely regretted when the following morning brought repentance and sobriety.

Anxiety of the Clergy to obtain land by purchase.

But the temporal possessions of the Clergy were by no means held with security. Abuses prevailed at an early period in the ecclesiastical establishments; and the superiors alienated the lands in favour of their friends and relations. This was partially remedied by a canon, which forbade the Bishop, the Abbot, or the Abbess, from making any grant but for one life; nor was this concession to be made, except with the consent of the communities of which they were the Superiors[a]. But the regulation was often evaded or infringed. Corruption and improvidence were, however, far less destructive than actual force and rapine; and, as in France[b], the Clergy were alternately the objects of liberality, and the sufferers from avarice and persecution. In the most fervid age of Anglo-Saxon piety, Ina did not hesitate to seize the lands which Cissa[2] had granted for the purpose of building the monastery of Abingdon, though he afterwards restored the spoil[c]. During the dismal and bloody period of the Danish invasions, the churches north of Thames were wholly destroyed; and when the Pagans were subdued, the lands of the ruined monasteries escheated to the Crown, and were granted out, not to the destitute and impoverished Clergy, but to secular Land-

Insecurity of the possessions of the Church.

Alienated by the Clergy and seized by the Laity.

Destruction of the churches north of the Thames, during the Danish invasions; after which their property escheated to the Crown and was granted out to laymen.

[a] Synodus Calecuthensis, A.D. 816; Concilia, vol. i. 170.

[b] Montesquieu, livre xxxi. c. 10.

[c] Charter of Ina, A.D. 699; Monasticon, vol. i. p. 513.

Part I Ch. V.

lords. Ely, Croyland, Medeshamstede or Peterborough, Peykirk, and Bardney[a], were thus divided by Beorred amongst his Nobles, his Ealdormen, his Thanes, his Banner-bearers and his Stipendiaries or Soldiers; and if Edgar had not sedulously sought out the old charters, which identified the possessions of other monasteries, the "Magnates," who occupied the lands, would have retained them without challenge or impeachment. In the eleventh century, these spoliations were renewed. Rochester had to deplore the robberies of Earl Godwin[b]. Leofric plundered Worcester with equal recklessness. The Earl of Mercia not only invaded the property of the See himself, but encouraged and supported his followers in similar acts of rapine. Repenting his misdeeds, it is true, he restored a portion of the Church-lands; and the promise, that the other Manors which he had usurped should revert to the monastery after his death, seems to have satisfied his conscience. Godiva, his widow, in declaring her intention to fulfil the wishes of her husband, again bargained with the Monks for the possession of the lands during her life, after which it was agreed that they should revert to the See; but Edwin and Morcar seized the property of Godiva; the right of the Church was for ever lost; and the prayers addressed to St. Oswald[1], the patron and advocate of Worcester, were of little avail in inducing the Knights of the Earl of Hereford to restore the Townships of which they had been enfeoffed by his lawless liberality. The possessions "given to St. Mary by the devout, " and afterwards taken away by the fraud, force and violence, " of the wicked," are carefully registered in the Chartulary of Worcester; and had the other churches possessed a scribe endowed with the diligence of Hemingus[2], they would probably have exhibited a similar catalogue of spoliations. William the Conqueror had, therefore, at least a precedent for his violations. Pursuing the same system, he did not scruple to grant the lands, even of Glastonbury, to the Norman soldiery; and when a tardy restitution of parts and parcels of the property could be obtained, the charter carefully confirmed the donations which had been made to his feudal followers[c]. These events, and they were

Rochester plundered by Godwin.

Leofric invades the possessions of Worcester.

Leofric restores a portion of the land, and promises that the rest should revert to the See after his decease; his widow, Godiva, bargains for the possession of the lands, which, after her death, were seized by Edwin and Morcar.

Spoliations of Worcester recorded by Hemingus.

William the Conqueror continues these spoliations.

[a] Historia Eliensis, 464. Ingulphus, 25. This is one of the passages in which the agreement of Ingulphus with other authorities, gives him an unusual degree of credibility.

[b] Thorpe, Registrum Roffense, p. 525.

[c] Malmesburiensis, de Antiq. Glaston. Ecclesiæ, p. 331. Hemingi

repeated, more or less, in every country in Europe, shew that the influence of the Hierarchy has been much overrated. They were never certain of their political existence. The sword was always suspended over their heads, until they united their interests with the worldly Powers. All the imprecations denounced against the invaders of the lands of the Church, the awful curses which resounded in the charter, the threats of everlasting punishment, were insufficient to protect the tempting domains from the grasp of the despoiler. This insecurity must be considered as one of the main causes of the crooked policy of the Papal See. The Clergy resorted to arts and wiles, as their defence against a turbulent Aristocracy or a rapacious Sovereign: the cunning of the weak was opposed to the arms of the strong. For, from the age of Charles Martel, down to the reigns of Henry, or Joseph, or Napoleon, when could the Pontiff or the Priest retain any possessions which the King and the Soldier were determined to acquire?

Primacy of Canterbury over the British Bishops granted by St. Gregory to St. Augustine, in consequence of the temporal Sovereignty of Ethelbert

The pre-eminence of the Primate of all England over the Churches of Wales has been much contested. By the secular authority of Ethelbert, the Bishops of the Britons were summoned to meet St. Augustine, at that Oak which long afterwards bore his name[a]; and their submission to the mandate of the King of Kent, proves, that the dominions still held by the British Reguli were subject to the imperial supremacy of the Bretwalda. Upon this right of Monarchy, it is probable that Gregory grounded the Bull which gave to Augustine the Primacy of the Britons; for it must be recollected, that the ecclesiastical jurisdictions always followed the temporal Sovereignty, and were created by it; and the assignment of one Metropolitan to London or Canterbury, and of the other to the capital of the Kingdom of Northumbria, resulted, not from the geographical, but from the political division of the island. The refusal of the British Prelates to obey the Roman Legate, was accompanied by an attempt to regain the national independence; but the Anglo-Saxons ultimately asserted

Cartularium, p. 263. Carta Will. Conquestoris de Possessionibus Ecclesiæ restituendis; Monasticon, N.E., vol. i. p. 478. [Malmesbury, On the Antiquities of the Church of Glastonbury, p. 331. Heming's Chartulary, p. 263. Charter of William the Conqueror for the restoration of the possessions of the Church.]

[a] *Augustinaes Ac*, probably in Worcestershire. See Hist. Eccl., lib. ii. cap. 2; and Camden, p. 629.

Part I. Ch. V.

their superiority. Oudoceus[1] of Llandaff received his consecration from St. Augustine[a]. And the obedience of his successors to the See of Canterbury cannot be disputed. Amongst the Picts and the Gael, the Anglo-Saxon Prelates had no authority; they were considered as strangers in nation, and almost in creed. But a considerable portion of modern Scotland was included in the Province of York; the Firths of Forth and Clyde constituted the boundaries of the State of Northumbria, and of the Bishopric of Lindisfarne: and the town of Edwinesburgh or Edinburgh, together with many other domains, had been bestowed upon the See by the bounty of Ceolwulf[2]. The ancient Bishops of the Scots, co-ordinate in rank, and without any distinction of Province or See, equally exercised their pastoral functions in every part of the land which was peopled by their countrymen. And when Lothian was separated from the Crown of Northumbria, these Prelates descended into the Saxon Lowlands, whose connexion with Lindisfarne had been destroyed. Malcolm Canmore first divided his Kingdom into dioceses, and the Bishop of St. Andrew's acquired the rights of St. Cuthbert beyond the Tweed: yet they were not forgotten; and Ralph Flambard endeavoured, though in vain, to re-assert his privileges over the less-distant Teviotdale[b]. Whithern, or "Candida Casa," was the seat of another Bishopric, founded by Ninian[3], and which extended over that part of Galloway which was subjected or tributary to the Anglo-Saxons of Northumbria. Exposed to the incessant invasions of the Scots and the Picts, this "extreme region of England," as it is termed by Malmesbury, seems to have been separated from Northumbria in the period of anarchy which succeeded to the assassination of Ethelred[4]; the Bishopric became extinct; and the inhabitants of the district are thought to have submitted to the spiritual jurisdiction of the Norwegian Prelate of Man and the Isles. When the See was revived in the eleventh century, the Bishop elect, Gilla Aldan, was admonished to place himself under the archiepiscopal authority of the Primate of England. Gilla Aldan obeyed; and the attendance of the Prelates of "Candida Casa,"

Picts and Scots not subjected to the authority of the Archbishop of York.

Lowlands of Scotland, south of the Firths of Forth and Clyde, part of the ancient Kingdom of Northumbria.

Lothian included in the Bishopric of Lindisfarne, until the erection of the Bishopric of St. Andrew's.

Bishop of Candida Casa, Whithern, or Galloway, acknowledges the Primacy of York.

[a] Usher, Britannicarum Ecclesiarum Antiquitates, p. 46.

[b] Bede, Hist. Eccl., lib. iv. c. 26. Sim. Dunelm., pp. 69, 139. Hoveden, p. 418. Monachus Dunelmensis de Episcopis Dunelmensibus, Anglia Sacra, vol. i. p. 708. Will. Malm. de Gestis Pontificum, lib. iii. p. 155. Spottiswood, History of the Church of Scotland, pp. 4, 29. Chalmers, Caledonia, pp. 329, 427, 674.

in the Great Councils of England, under Henry II., resulted from this supremacy[a].

Councils of the Clergy.

Provincial and national Synods were coeval with the establishment of Christianity in England; and when matters, purely spiritual, were to be discussed, they were composed only of the Teachers and Pastors of the people. Thus, none of the laity attended the Council of Herutford, of which the principal canons related to the due observance of Easter, and the extent of episcopal authority[b]. Another instance is afforded by the Council convened at Haethfelth[c], for the purpose of preventing the progress of the Eutychian heresy[1]. A confession of faith, as decreed by the first five General Councils, was declared or renewed by "All the Bishops of the Island of Britain"; and their deliberations on the doctrines of the Church were unaided by the secular authorities. The Sovereigns, in whose concurrent reigns the acts of the Council are dated, Ecgfried of Northumbria, Ethelred of Mercia, Aldwulf of East Anglia, and Lothar of Kent, do not appear to have confirmed its deliberations; and it had already been decreed, that such "Synods" should be held[d] on the first of August in each year. In the early Councils, Bishops only are noticed as attending. Subsequently, we find Abbots sitting amongst the Prelates, and the inferior Clergy subscribing the Acts, or assenting to the Decrees of the Synod. But the limits of ecclesiastical and civil policy were not accurately defined; and though the faith was expounded by the Clergy alone, still the discipline of the Church was enforced by the sanctions of the temporal legislature. Subsequently, the Councils of the Anglo-Saxon Clergy were held concurrently with the meetings of the Witan of the Anglo-Saxon

Councils of Herutford (Hertford) and Haethfelth (Bishops-Hatfield), A.D. 673, 680, both held by Theodore of Tarsus, Archbishop of Canterbury.

Ecclesiastical Councils held concurrently with the secular Councils,

[a] Benedictus Abbas, pp. 180, 195, 211.

[b] Hist. Eccl., lib. iv. c. 5.

[c] Imperantibus dominis piissimis nostris, Ecgfrido, Rege Hymbronensium, anno decimo regni ejus, sub die quintadecima Kalendas Octobris, indictione octava, et Aedilredo, Rege Mercinensium, anno sexto regni ejus, et Alduulfo, Rege Estranglorum, anno decimo septimo regni ejus, et Hlothario, rege Cantuariorum, regni ejus anno septimo, Hist. Eccl., lib. iv. c. 17. [Under the commands of our most pious lords, Ecgfrith, King of the Northumbrians, on the 17th September, in the eighth indiction, in the tenth year of his reign, and Ethelred, King of the Mercians, in the sixth year of his reign, and Aldwulf, King of the East Anglians, in the seventeenth year of his reign, and Hlothere, King of Kent, in the seventh year of his reign.]

[d] Council of Herutford, as above.

Part I. Ch. V.

in which many laws, relating to the Church, were enacted.

Proceedings of the Council of Cealchythe, A.D. 785.

Kingdoms: the temporal statutes usually stating, though with some varieties of expression, the consent of the Bishops, the Abbots, and the servants of the Lord; and the ecclesiastical canons being enacted at the same time with the statutes relating to general government and policy. The proceedings of the Council of Cealchythe[a], which have been accurately preserved, throw great light upon the constitution of these assemblies. George, Bishop of Ostia, and Theophylact, Bishop of Tuderta, opened their mission, by presenting the Papal Bull to Offa, King of Mercia, and Cenwulf, King of Wessex; and the Sovereigns, with the advice of their Bishops and Ealdormen, allowed the first-named of the Legates to meet the Clergy of Mercia and the Britons, then subjected to the English power. Theophylact proceeded to the Court of Athelwold, King of Northumbria, bearing with him a "Capitular," containing the canons and regulations adapted to the state of the country, which he expounded to the Sovereign, the Prelates, and the Witan,—Dukes and Senators, Judges, "Optimates," and Nobles,—whose signatures testified their consent, as well as that of the people, who attended during the discussions. Sanctioned, in this manner, by the Supreme Assembly of Northumbria, the Decree was entrusted to the Legate, to the Ambassadors or Messengers of Athelwold, and to the Archbishop of York, who bore it to the Supreme Council of Mercia. Offa, and the "Senators" of his land, the Archbishop of Canterbury, and the other Prelates, were assembled to meet them; in their presence, the Chapters were read both in Latin and in Anglo-Saxon, "in order that all might understand"; and the acceptance of the canons, by the King, Prelates, and "Principes," one of whom, "Brorda," bore the special title of Prince, or Ealdorman of the Mercians[b], ratified the law[c]. The canons of the Clergy, therefore, had no avail, unless confirmed by the secular authorities; and the Precepts of the Roman See derived their legal effect from the will of the Sovereigns of England.

In the earlier ages of the Anglo-Saxon history, the Clergy,

[a] The modern name of this place, which, in the proceedings of the Councils, is styled "Locus celeberrimus," is not ascertained[1].

[b] Concilia, vol. i. pp. 145, 151.

[c] Anno 799. Brorda, Princeps Merciorum, qui et Hildegils vocatur, defunctus est, Sim. Dunelm., p. 10. [Brorda, Prince of the Mercians, who is also called Hildegils, died.]

and perhaps the people, may have been occasionally allowed to concur in the choice of their Pastor; but the instances of such elections are far less numerous than those which might be adduced to shew that the nomination was vested in the Sovereign. This power, indicated in the earliest age of Anglo-Saxon Christianity, was so fully established after the Danish invasion, as to leave no doubt of the ample extent of the ecclesiastical authority exercised by the Anglo-Saxon Kings. When Edward the Confessor notified the promotion of a Prelate, it was by the promulgation of a Charter, which stated that he had given and granted the Bishopric with all that thereto belonged; not the slightest allusion is made to the will of the Pontiff, or the postulation of the Clergy. He declares his will and pleasure, and in terms more than emulating those employed by our eighth Henry in the plenitude of his power[a]. The same royal authority controlled the other branches of ecclesiastical promotion: the Abbot was elected by the King's consent, he resigned his monastery in favour of a successor, by the King's license[b]; and when the Bishop wished to remove his See, he applied in the first instance, not to the Pope, but to the King[c].

Bishops, nominated by the King.

Edward the Confessor grants the Bishoprics by "gewrit and insiegel"; i.e. writ, charter, or patent under seal.

This ecclesiastical supremacy, though it evinces the very limited authority of the Bishop of Rome, was neither salutary nor efficient. The peculation so loudly laid to the charge of the early Anglo-Norman Monarchs, the simoniacal sale of the dignities of the Church, existed to the most deplorable extent amongst the Anglo-Saxons; and the gifts by which Wini[1] obtained the Bishopric of London from Wulfere, King of Mercia, testify both the value of the See, and the antiquity of such violations of trust and duty[d]. Though the same corruption cannot be brought home to Edgar himself, yet the "Principes" of his Court were allowed to barter his ecclesiastical patronage for their own lucre and profit[e]. And when Edsi[2], the Archbishop of Canterbury, vacated his See, he consecrated his successor with the utmost haste and the greatest secrecy, "lest some other

Simoniacal presentations.

Wini buys the Bishopric of London from Wulfere, King of Mercia, A.D. 666.

Patronage of the "Principes" of Edgar.

[a] Hickes, Gram. Anglo-Saxonica, pp. 160, 161.

[b] Sax. Chron., A.D. 1044.

[c] Will. Malm., de Gestis Pontificum, lib. ii. p. 142. [Malmesbury, Acts of the Bishops.]

[d] Hist. Eccl., lib. iii. c. 7.

[e] Osbernus in Vita Odonis Archiepiscopi Cantuariensis; Anglia Sacra, vol. i. p. 85. [Osbern in the life of Odo, Archbishop of Canterbury.]

Part I. Ch. V.

man should beg or buy" the desirable preferment[a]. Edward the Confessor, who was then reigning, exercised his powers of appointment with the advice or concurrence of the Witenagemot, and his character may clear him from any participation in these disgraceful bargains; but, however uninfluenced by sordid motives, this weak and wavering Sovereign connived at the most flagrant abuses. Archbishop Aldred was thus allowed to keep the Abbey of Winchcombe "in his own hand" until the Monks submitted to his will, and elected for the Abbot, Godric, the son of Godman, the King's Chaplain[b]. Sanctioning such outrages, he yielded with the utmost facility to the flatteries of the unworthy; and even the monkish chronicler does not attempt to veil or palliate the consequences of his errors. "Edward the "King," it is stated, "gave the Bishopric which Ednoth had, to "Ulf, his Priest, but it ill-betided him; and he was driven from "it, because he did nought like a Bishop therein, so that it "shameth us now to say more."[c] Of the adventures and character of Sparhafoc, another of the Confessor's favourites, further details are preserved[d]. This Monk of St. Edmunds, who, like St. Dunstan, was eminent for his skill, as a cunning worker of metals, was first appointed to the Abbacy of Abingdon by the Confessor, and afterwards obtained a grant of the Bishopric of London; at the same time that the Abbey, which he vacated, was bestowed upon "Rothulf, the King's kinsman." A fertile Manor belonging to Abingdon, and granted to Stigand, Bishop of Winchester, facilitated the nomination of Sparhafoc to the vacant See; but on applying to the Metropolitan for confirmation, the latter refused obedience to the King's commands, alleging that the Pope had forbidden him. A second demand received the same answer. "And then went the Abbot to "London, and sat at the Bishopric which the King had given "him, with his full leave, all the Summer and all the Autumn." Though thus enthroned by the King's power, he did not long retain his station. In the following year, we find that "Abbot

Edward the Confessor connives at abuses.

Adventures of Sparhafoc, Abbot of Abingdon, and afterwards Bishop of London, 1048–50.

[a] Sax. Chron., A.D. 1044, p. 214.

[b] Flor. Wigorn., A.D. 1053, p. 626.

[c] Sax. Chron., A.D. 1039, p. 223.

[d] Sax. Chron., A.D. 1050, 1051, pp. 224, 225, 232. Flor. Wigorn., A.D. 1050, p. 626. Historia Coenobii Abendoniensis, A.D. 1048, 1050; Anglia Sacra, vol. i. p. 167. Liber Abendoniensis; MS. Cott. Claudius B vi. f. 113.

"Sparhafoc was driven from his Monastery, and William, the "King's Mass-Priest, invested therewith." Thus far the Chronicle: but, from the Book of Abingdon, we ascertain, that having been entrusted by the King with gold and jewels to a large amount, for the purpose of making a splendid Crown, he absconded from England, to which he never more returned. Of Leofgar, Earl Harold's Mass-Priest or Chaplain, and who succeeded to Hereford, it is recorded that he abandoned "his rood, "his ghostly weapons, and took his spear and his sword, and so "marched to the field against Griffin, the Welsh King"[a]; and in this conflict, so little consonant to his calling, he was slain.

The King's Priests or Chaplains obtain the principal preferments:

Amongst the members of the royal household, were those who, like Ulf and Godman, bore the title of the King's Priests or Chaplains. Their station near the Monarch enabled them to sue for preferment, and the records of Anglo-Saxon history, scanty as they are, furnish so many instances of the promotion of the ecclesiastical attendants of the Court, as to render it probable that the episcopal order was chiefly composed of them. Humbert, the "King's Chaplain," was thus nominated to the See of Lichfield by Offa[b]; and under Hardicanute and the Confessor, the list already given may be increased by the names of Edsig[c], Kinsig[d], Alwyn[e], Stigand[f], Hecca[g], Gyso[h], and Herman[i]; all denominated the "King's Priests" or "Chaplains," who obtained the Sees of Canterbury, York, Winchester, Selsea, Bath and Wells, and Sherborne, from the bounty of their masters.

correspond to the Clerks of the Palace, of the Frankish Monarchs.

In their official capacity, these Priests or Chaplains, the "Clerks of the Palace," of the Frankish Monarchs, constituted a definite and recognized body, not in their spiritual character, but by virtue of the secular employments which they held: their signatures were affixed to the royal Charters, with a notice of their station; and Twelve of these Chaplains or Clerks, the principal subscribing himself

[a] Sax. Chron., A.D. 1056.

[b] Vita Offæ Regis; Concilia, vol. i. p. 152.

[c] Flor. Wigorn., A.D. 1038. Sim. Dunelm., p. 179.

[d] Sax. Chron., A.D. 1050. Sim. Dunelm., Flor. Wigorn., p. 626.

[e] Sax. Chron., A.D. 1032. Sim. Dunelm., p. 178.

[f] Flor. Wigorn., A.D. 1038, p. 623.

[g] Sax. Chron., A.D 1047. Flor. Wigorn., p. 626.

[h] Writ of Edward the Confessor. Hickes, Gram. Anglo-Saxonica, pp. 160, 161. Sax. Chron., A.D. 1060, p. 250. Flor. Wigorn., p. 631.

[i] Sax. Chron., A.D. 1044. Flor. Wigorn., p. 625. Sim. Dunelm., A.D. 1045, p. 179.

Part I. Ch. V.

as Chancellor, confirm a Charter, which, though executed after the Conquest, is in every respect conformable to the usages of Anglo-Saxon diplomacy[a]. These titles and officers had been borrowed from the more polished nations of the Continent. Originally the confidential secretary of the Prætor, the Chancellor rose to a corresponding station in the Palace, and his rank in the court of the Anglo-Saxon Monarch can be understood from the Registers of Theodoric of Verona. To his fidelity was entrusted the custody of the royal "Consistory." He was the receiver of the petitions or requests which the People addressed to their Chief Magistrate, the King, and the suppliant, who approached the royal Person, was conducted to the presence chamber by the Chancellor[b]. Such also was the "Summus Cancellarius," or High Chancellor of the Frankish Sovereigns, who transmitted the royal capitularies to the Counts of the Empire[c], and acted as the medium of communication between the monarch and his judicial officers. Amongst other functions of a mixed nature, but principally relating to the dispensation of mercy, grace and favour, the "Summus Cancellarius" was the President of the Board or College of "prudent, intelligent and faithful men," the "Palatine Clerks," or Chaplains, before mentioned, who were enjoined to write or engross the King's writs or precepts "without exacting any inordinate fees"[d]: a description nearly agreeing with that which Fleta has afforded of the King's Sworn Clerks in the thirteenth century[e]. Besides the Chief, or High Chancellor, it is ascertained from the capitularies, as well as from the Ripuarian law, that there was a Chancellor in every "Pagus," who was merely a notary or scribe, and whose signature authenticated private deeds or charters[f]. Edgar appropriated

Eleven of the King's Capellani, together with the Twelfth, the Cancellarius, subscribing a royal Charter.

Chancellors of the Gothic and Frankish Sovereigns.

Edgar appropriates the Chancellorship to

[a] Charter of Will. Rufus, granting the Abbey of St. Peter, at Bath, to John, Bishop of Somerset or Wells, A.D. 1088; Hickes, Dissert. Epist. p. 47.

[b] Cassiodori Variorum lib. xi., formul. 6. Cod. Theodos. lib. i. tit. xii., de Assessoribus domesticis et Cancellariis; and the Commentary of Gothofredus.

[c] Ludovici Pii Capit., A.D. 823.

[d] Hincmari Epistola de ordine Palatii, § 10. [The letter of Hincmar on the administration of the Palace.] See also Du Cange, s.v. *Capella* and *Capellani*, and Part II., *Proofs and Illustrations*, p. 274.

[e] Fleta, lib. ii. cap. 13, de Cancellaria.

[f] Caroli Magni Capitulare Tertium, A.D. 903, § 24. Capit. lib. iv. cap. 43.

the office of the Chancellorship of his court to the Abbots of Ely, St. Augustine's, and Glastonbury. Each of these Prelates was to exercise his office during four months of the year, an employment which necessarily compelled him to follow the person of the King[a]. The concession, which restricted the Monarch in the choice of his Ministers, did not long subsist. Under Canute, we find five "Secretaries," one of whom, Etheric, Bishop of Winchester, appears to be the individual corresponding to the Chancellor of Edgar; and he is noticed as accompanying the Monarch when, according to his custom, he was making his judicial Eyre through the Kingdoms which he ruled[b]: and Leofric, the King's Priest, a Briton by birth, but educated in Lorraine, became the Chancellor of the Confessor, and the first Bishop of Exeter, to which city the See of Crediton, or, more properly, the Bishopric of the Britons of the West, was transferred[c]. Could the authenticity of the Legend of Thurkettle[1] be maintained, the rank and dignity of the Anglo-Saxon Chancellor would not rest upon conjecture[d]; but we need not dwell upon this dubious authority, since from the earliest period when the organization of the government becomes intelligible, we find that the Chancellor was considered as an official member of the King's Court, whilst the King's Clerks or Chaplains were equally constituted its constant attendants: and a situation was thus given in the supreme Tribunal to a small and select body of the Clergy, not in respect of their order, or of their possessions, but solely for their skill in those acquirements, which were required for the administration of justice. The art of writing was almost wholly confined to the Priesthood, and the King's Clerks, therefore, naturally became his Scribes. The Royal Charters and Muniments, treasured amongst the relics, were entrusted to their care; and upon them also devolved the task of composing the Writs or Mandates which emanated from the King's Court, the Supreme Remedial Tribunal. Hence arose the Chancery, the "Officina Brevium," whose functions, when sanctioned by usage, became a barrier to the Prerogative of the Crown in some of its most oppressive branches, and the means of effecting great changes

the Abbots of Ely, St. Augustine's, and Glastonbury each taking his turn for four months of the year.

The Five Secretaries or Chancellors of Canute.

Leofric, Bishop of Exeter, Chancellor of Edward the Confessor.

The King's Clerks, acting as his Scribes, became a permanent branch of his Court, and keepers of the Records deposited in the Royal Chapel (see above, p. 117), being the establishment afterwards called the Chancery.

[a] Hist. Eliensis, p. 501.

[b] Hist. Ramesiensis, p. 441.

[c] Sax. Chron., A.D. 1046, p. 216. Flor. Wigorn., p. 625. Sim. Dunelm, p. 180. Will. Malm., de Gestis Pontificum, lib. ii. p. 145.

[d] Ingulphus.

in the general system of the law. So many important events in the history of the Constitution resulted from the existence of this ecclesiastical ministry, that it is interesting to trace it in its remotest origin.

The canons and exhortations addressed to the Anglo-Saxon Clergy, during the tenth and eleventh centuries, testify their failings. Inebriety, sloth, ignorance and debauchery call forth the censures and admonitions of those Prelates, who were, perhaps, scarcely less reprehensible than the inferior orders of the hierarchy. The power assumed by the Sovereigns of nominating to the Episcopal office was much abused, and no competent authority existed which might have checked the degeneracy of the Clergy. The contest between the head of the Church and the head of the State, was, in effect, merely a quarrel for the spoil; and whether the good red gold was paid for the Pallium in the Vatican at Rome, or in the Treasury at Winchester, for the "writ and seal," the best and dearest interests of religion were equally sacrificed to avarice and cupidity.

CHAPTER VI.

Imperfection of the Judicial Establishments of the Anglo-Saxons—Execution of the Law entrusted to the Parties—Namium, or Distress—Deadly Feuds—Responsibility of Clans or Septs—Laws for the prevention of Theft—Liability of Districts—Sales of Property to be made before Witnesses or Jurats—Frankpledge—Seignorial Frankpledge, or individual liability of the Lord for his Vassals, &c.—Collective Frankpledge, or mutual liability of the Villeinage—Tithings—Erroneous Opinions relating to their nature—Their Antiquity uncertain—Conjectures as to their Origin—Severity of the Anglo-Saxon Jurisprudence.

An organized judicial establishment, such as we now possess in England, is the result of long-continued obedience to the supremacy of the civil authority. During the subsistence of the Anglo-Saxon policy, the State had not yet fully acquired all the functions which belong to executive jurisdiction. The law of nature was not yet entirely superseded by the artificial code of society, or, rather, both might be said to exist concurrently. In many cases, therefore, the principal object of the legislator was the regulation of the means by which individuals were to do justice to themselves in their own cause; and the laws of the land chiefly consisted of the rules intended to prevent those acts of oppression which might be perpetrated under colour and cover of the law of nature, which was restrained without being abrogated by the municipal law. In suits between man and man, the execution of process seems to have been wholly entrusted to the parties, who, to use the familiar phrase, began by taking the law into their own hands, and originally, as it should seem, without asking the authority of a tribunal. The plaintiff compelled the appearance of the debtor by distraining his effects; and statutes were afterwards enacted by Canute, not for the purpose of destroying that power, but to prevent its being exercised by surprise. The pledge was not to be taken until the defendant had been thrice summoned

Imperfection of the judicial establishments of the Anglo-Saxons.

"Namium," or distress, the first process by which a defendant was compelled to appear.

Part I. Ch. VI.

to submit to the judgment of the Hundred[a]; a fourth day of appearance was to be appointed by the Shire; and if the defendant still continued contumacious, the Complainant had then liberty to seize the property of his adversary wherever he could find it, and at his discretion. When the King's Courts were fully established, the power of distress, as the enforcement of civil process, was properly assumed by the Tribunal; and the Sheriff, acting by virtue of the King's writ, exercised the function which it was no longer expedient to vest in an interested individual, who might pursue his demand harshly and vexatiously, and perhaps even without any real foundation for his claim.

Process of the Courts of common law, by summons and *distringas*, grounded upon the Anglo-Saxon law.

Grounded thus upon the Anglo-Saxon or Teutonic law, the Anglo-Norman jurisprudence first required the defendant to appear by the lawful summons of the officer, no arrest of the person being ever allowed at common law, except when justified by a breach of the peace, or a contempt of the King's authority. If he neglected the warning, then those mandates issued, by virtue whereof his chattels were seized as the "pledges" that he would underlye the law, the writ of *Distringas*[b] being, as I have before observed in a similar instance, only the Teutonic law clothed in a more definite form. But there are still cases in which the law "allows a man to be his own avenger, or to minister redress to himself"[c]; the most extensive and best known, being when distress is made for rent arrear. Until the common law was greatly altered by modern statutes[d], a distress corresponded to the Anglo-Saxon procedure; for the property was only taken as a pledge or security that the Tenant would submit to his Lord, and perform his service; and the summary power of sale, now exercised, has been created by the recent statute law, with more attention to the profit of the rich, than to the rights which were secured to the poor by our ancient jurisprudence.

(See above, p. 115.)

The Landlord's power of distraining for rent, derived from the same source.

When blood had been shed, and the foe had fallen, the Anglo-Saxon law allowed an ample power of vengeance. It was by raising the Feud, that the kinsman sought to retaliate upon the enemy. Septs and Tribes were arrayed against each other, and the vassal fought beneath the guidance of his Lord. The short

Deadly feuds allowed by the Anglo-Saxons.

[a] Canute, II. § 18. Laws of William the Conqueror, XLIV. Robertson, View, p. 236. See Part II., *Proofs and Illustrations*, p. 185.

[b] 3 Blackstone, 6.

[c] Blackstone, 280. App. xvii.

[d] 2 W. and M., c. 5. 8 Anne, c. 14. 4 Geo. II., c. 28. 11 Geo. II., c. 19. See Blackstone, vol. iii. pp. 14, 15.

terms of truce prescribed by the legislator, only afforded breathing time to the offender, without protecting him from the assailants[a]; and the fines imposed upon the armed troop who killed the guiltless man, testify that if a crime had been imputed to him the deed would have been a justifiable homicide[b]. But the right of retributive aggression might be limited by the weakness of the aggrieved party; destitute of the support of his kindred, he might be unable to pursue his adversary: the State was then bound to interfere, and the Ealdorman, or even the King, might be required to supply that strength which could not be exerted by the individual.

Reprisals, the mode of obtaining justice when the law cannot reach the offending or guilty party.

If the general authority by which justice ought to be administered is so inefficient, that it cannot easily strike the guilty, or if such general authority does not exist, past offences are redressed, and future injuries prevented, by rendering the community to which the individual belongs answerable for the acts of the transgressors, who, amenable only to their own immediate superiors, would otherwise escape the punishment due to their crimes. Should a Syrian village be plundered by a band of Bedouins, who acknowledge a vague submission to the successor of the Caliph, but without allowing him any direct interference in their policy, the Pacha will make reprisals upon the Tribe, and thus compel the Emir to produce the robbers, or to restore the spoil. International wars are best justified upon the plea, that the want of a common jurisdiction leaves no other mode of obtaining justice except by an appeal to force; and when one sovereign issues his orders to waste and destroy the property of the subjects of another, he inflicts these sufferings upon the innocent, because the dispute cannot be ended by the decree of a tribunal possessing a coercive and pacific authority over the Chief of the opponent State, who is only to be reached through the inconveniences which he thus indirectly sustains. The power given to the Conservators of Magna Charta, of compelling King John to observe its provisions, by attacking and distraining his possessions, was perhaps less derogatory to his ideas of royal dignity, than a formal submission to the Supreme Council of the realm. Considering, therefore, the Anglo-Saxon Commonwealth as the union of jurisdictions originally independent, and confederated, rather than incorporated, under one government, we shall find that no inconsiderable portions of its laws consist of the expedients by which

[a] Alfred, § 38.

[b] Alfred, § 26.

Part I. Ch. VI.

the responsibility of the members of the commonwealth was either enforced or superseded; enforced, when they were compelled to employ their powers in obedience to the government of the state; superseded, when their authority was transferred to the general legislature, and the regular administration of the law substituted for the rude and uncoerced exercise of natural justice.

As the first government arose from parental authority, so the most obvious liability resulted from the ties of relationship. It was the ancient custom of the Celts, that every Head of every Sept, and every Chief of every Clan, should be accountable for any one of their Sept, when charged with any crime[a]; and until Ireland was fully reduced into shire ground, the statute laws of the English Government continued to enforce this responsibility[b]. Under the Anglo-Saxons, whose policy was less patriarchal, there was no Ceancinnith; but the responsibility was attached to the "Maegth," who, if they did not discharge the legal fines, in cases where the individual could not make compensation from his own means, were bound to surrender him into slavery[c]. A Ceorl or Litus who killed an individual of the Earl-kind or noble rank, drew down a heavy punishment upon his lineage; the blood of six of the subject-caste might be required, according to the Anglo-Saxon law, to compensate for the treason committed against the majesty of the sovereign people, whilst the more rigorous continental code demanded the sacrifice of seven[d]. The thief, who, under the Code of Athelstane, might be thus redeemed from death for the first offence, was delivered into the custody of his kindred, who were ever afterwards the special pledges for his good conduct[e]. And if a "landless-man," discharging himself from the service or commendation of his Lord, was received or harboured by his Sept, they were equally under the obligation of "leading him to folkright," if he were guilty of a crime, or of making full compensation for the offence if he absconded[f]. Nor were these provisions unreasonable, according to the spirit of the Anglo-Saxon jurisprudence,

(See above, p. 57.)
Responsibility of the "Maegth," or Kindred,

(See above, p. 10.)

[a] Spenser, A View of the State of Ireland.

[b] An Act that five persons of the best and eldest of every *nation* amongst the *Irishrie* shall bring in all the idle persons of their surname to be justified by law. 11 Eliz., c. 4.

[c] Edward the Elder, § 9.

[d] LL. Saxonum, Tit. 2, § 5. Anglo-Saxon Customs.

[e] Athelstane, II. § 1.

[f] Athelstane, II. § 8.

since the "Maegth" received a portion of the penalty in case the clansman fell by the sword. An example, fully elucidating this principle of the Teutonic law, is found in the custom which enabled the Salic Frank, and perhaps the Anglo-Saxon, to dissolve the communion existing between him and his Sept or "Parentela."[a] In order to accomplish this purpose he entered the Mallum, the Tunginus or the Centenarius being present, and breaking five elm wands above his head, he cast the fragments before the assembly, declaring that he withdrew from all participation in the liabilities and inheritance of his kindred. From thenceforth, if any of the "Parentela" died or were slain, he neither shared in the inheritance, nor received the blood-fine; and on his death, his property escheated to the Fisc of the Sovereign; by his severance from his kindred, he had become an alien in his own country. The symbolical ceremony noticed in this law is remarkable; for it was long the custom amongst the Teutonic nations to break a staff above the head of the kneeling criminal when the doom was passed, which severed him from every earthly tie.

elucidated by the Salic law, which enabled any individual to dissolve his natural alliance with his "Parentela."

As there were originally two sources of government amongst the Anglo-Saxons, clanship and territorial or incorporate jurisdiction, so the State availed itself of the surety afforded by both these bonds of union. When a theft was committed, and the thief was concealed, the burden of indemnity might be thrown upon the district involved in the guilt of the secret offender. The amerciament, called "murdrum,"[1] is, perhaps, to be deduced from this ancient responsibility. A law is said to have been introduced by Canute, that if any man were found dead in the common field, and the manslayer were unknown, and could not be apprehended, the Township was to be fined, unless it could be shown that the party slain was an Englishman; for thus was the law enacted, to avoid the murder of the Danes, who were hated by the English nation, and often fell a sacrifice to their revenge. William, finding that the same enmity subsisted against his French and Norman followers, is supposed to have continued this regulation[b], which subsisted until it was abolished by

Territorial responsibility.

"Murdrum," or the amerciament imposed upon a Township if any one —not being an Englishman—was slain within its precincts,

supposed to have been enacted by Canute, and continued by William the Conqueror;

[a] L. Salica, tit. lxiii., de eo qui se de parentela tollere vult. [Concerning the man who wants to withdraw from his Clan.] LL. Henrici I., § 88.

[b] Dialogus de Scaccario, lib. i. cap. 10. LL. Edwardi, § 16. Bracton, lib. iii., de Corona, c. 15.

Part I. Ch. VI.

statute[a], having been a great source of oppression to the people. Whilst the existence of the custom is fully proved, we may be permitted to doubt the traditionary accounts of its origin. In the statutes of the Danish King no mention can be found of this peculiar penalty; and I would rather view it as grounded upon the custom which placed the stranger under the immediate safeguard of the King, and, as such, entitled the Monarch to a considerable share of the "Were" or blood-fine[b]. The "murdrum" imposed or confirmed by the laws of William, was incurred when any Freeman was killed, and the men of the "Visne"[1] failed to apprehend the criminal within one week after the event[c]; and the presentment of "Englisherie," as practised in later periods, seems to have been the result of a confused application of the old laws, enforced under monarchs who sought every occasion of increasing their revenues.

but more probably resulting from a law which placed all strangers under the "Mund," or protection of the King.

Flocks and herds constituted the chief wealth of ancient nations; the common speech of the Roman, the Norman and the Anglo-Saxon discloses the class and character of the objects which were first considered as "Chattels" or "pecuniary" property[d]: and whilst the political economist vainly labours to define his abstract "Capital," the term, in its original signification,

Wealth of ancient Nations principally consisting of flocks and herds, as indicated by the etymologies of "*pecunia*" from "*pecus*," "*Feoh*" and "*Chattel*" (see below, note d),

[a] 14 Ed. III. Stat. i. c. 4. "Presentment of Englischerie shall be clearly extirpate."

[b] Ina, § 23. Canute, II. § 37.

[c] Laws of William the Conqueror, XXII. Part II., *Proofs and Illustrations*, pp. 136, 173.

[d] In the Anglo-Saxon, "Feoh" is used indiscriminately for both species of property, for beasts and for money. (See Lye.) The German "Vieh," retains only the primitive sense.

CAPITALE, CAPTALE dicitur bonum omne quod possidetur, præsertim vero bonorum species illa, quæ in pecudibus consistit, quam Forenses nostri *Catallum* vocant, voce a *Capitale* et *Captale* deducta. Nam *Capitum* vocabulo pecudes intelligi docemus infra: unde quicquid boni in armentis et pecudibus est, *Capitale*, *Captale* et *Catallum* appellatum est.

CAPUT dicitur quodcumque in recensione numerum efficit, sed præcipue usurpatur in armentis et gregibus. Hinc *Caput*, pro ipso animali, Du Cange.

[CAPITALE, CAPTALE is the name given to every kind of goods which we possess, but especially to that species of goods which consists of herds, which our men of the market call *Cattle*, a word derived from *Capitale* and *Captale*. For we shew below that by the word

merely results from the rude enumeration of the stock, by the heads of the animals of which it was composed. The Anglo-Saxon theft-laws relate almost wholly to the protection of cattle, and their general police was in great measure consequent upon the precautions adopted for the security of this species of property. For a system of practical law is generally established upon confined and narrow regulations, intended to attain peculiar objects, and afterwards applied to purposes never anticipated by the pristine legislator, and to which the laws are adapted by the expansion of society. Whenever the kine could be tracked into a district, the responsible parties were bound to shew the track by which the beasts had passed out of it. Were they unable to do so, the mark of the hoof was equivalent to the oath, by which a pursuer or plaintiff sustained his cause, and the burden of proof was immediately cast upon the defendants, who, unless they produced the thief, were liable to payment of the single value of the property. This was the law between Township and Township, between Hundred and Hundred, and also between Nation and Nation[a]: and the compact between the Britons and the English on either side of the Exe[1], exhibits the first example of the law, which was retained without any alteration in the Highlands of Scotland from time immemorial. When stolen property could be traced within the district of any particular village, the inhabitants were bound to make good the loss to the injured party, unless they could shew the track of the cattle passing again without their territories[b]. The Lord of the Anglo-Saxon Township was directed to appoint an officer, who was to assist in searching for the stolen cattle[c]; and in each district, the "Gerefa" was enjoined to raise the power of his bailliwick, and to join in assisting the parties grieved, who, in the language of the border law, followed their lawful "trodd, with hue and cry and with hound and horn,"[d] until the discovery of the offender.

and hence the Anglo-Saxon laws of theft are principally adapted to the protection of cattle.

If the "Spor" or hoof marks of the stolen cattle could be tracked into an Anglo-Saxon district, the inhabitants were bound to track them out, or to pay the value.

Similar law prevailing between the Britons and Anglo-Saxons of the West; and also in the Scottish Highlands.

"heads," herds are meant; hence, whatever property consists of flocks and herds, is called *Capital*, *Captal* and *Cattle*.

CAPUT is used of any unit which makes up a total in counting, but is employed especially with reference to flocks and herds. Hence *Caput* is used for the animal itself.]

[a] Devonian Compact, § 1. Athelstane, II. § 2. By-laws of the London Frithgild, Wilkins, p. 68.

[b] Millar, English Government, vol. i. p. 194.

[c] Edward, § 7.

[d] Leges Marchiarum, p. 89.

Part I. Ch. VI.

Warranty.

Possession appeared to afford a colourable title. Judging from the general principles of the law, the intervention of a short space of time was sufficient to raise the presumption that the cattle had been lawfully acquired; and in such a case the holder was allowed to call in the warranty of the person from whom he had obtained the contested property. The warrantor might appeal to a second, and he, in his turn, to a third; but beyond the third, no warranty was allowed. In all the Teutonic laws, the doctrine of evidence perplexes the modern inquirer: for it was so familiar to the people, as to render any minute explanation entirely unnecessary in the law book; and the omission of the details upon which the system was founded will often prevent our viewing the theory in its real aspect, or developing its true meaning. It may be collected, however, that there were two modes by which the demand of the plaintiff might be established, or the possession of the defendant might be confirmed. Either party might prove that the animal in dispute had been reared by him from the birth. "Team,"[a] or "Generation,"[1] was the name given to this conclusive proof, and it was applied equally to "men," that is to say, to Theowas, if they absented themselves from the domains of the Lord; and to his horses and to his oxen[b]. On a claim being preferred, five "neighbours," indwellers of the same Township, or members of the same "Tithing," were named to the plaintiff, from whom he selected one to support him on his oath. He swore that his demand was according to law, and the compurgator swore that the oath of the principal was true and according to good conscience. If the possessor wished to vindicate his right, he rebutted the claim by his oath, confirmed by two compurgators, selected, as before, from an array of ten neighbours, a mode of trial which will be afterwards more fully explained. When the title was not established in the Anglo-Saxon Court by "Team," it was then to be made out, by shewing that the chattels were obtained by sale in due form of law. No purchaser acquired a legal right in his bargain, nor could he retain the property which he had bought or bartered, unless the transaction had taken place in market overt, and before

"Team," or Generation, i.e. proof that the cattle were born on the land of the party claiming them.

"Fore-ath," or oath of the pursuer, supported by one compurgator.

Rebutted by the oath of the defender, supported by two compurgators.

Sales of cattle, not legal, unless made in the presence of witnesses;

[a] From *Tyman*, to teem or bring forth. Hence *Bearn-team*, a family of children. In Sussex they yet say, a *team* of ducklings or chickens, for a brood. See Lye; and Part II., *Proofs and Illustrations*, p. 167.

[b] Alfred and Guthrum, § 4.

a competent number of witnesses. In the laws of Lothar and Eadric, it is provided that the Kentish man was not to buy or sell in London, otherwise than in the presence of two or three "Ceorls," of unimpeached credit, or of the King's "Gerefa."[a] According to Edward and Athelstane, no dealing, above the amount of twenty pence, was to be effected without the walls of a city or in the folkmoot; and the testimony of the Port-gerefa, or other "credible witnesses," was required to insure its validity: and the same effect was given to the attestation of the Priest, the "Lord," or the Gerefa of the Township[b]. In a concurrent statute, attributed to the same Monarch, of which the Saxon original has perished, it is directed that no "unknown cattle" shall be possessed without the testimony of the "Concionator"[1] and the men of the "Tithing."[c] Whether the latter were to be considered as the witnesses of the purchase or not is uncertain; but it is more probable that they were only required to prevent the receipt of stolen property; whilst the superior functions of attesting a sale belonged to the "Concionatores." Local customs probably modified these usages; but by the statute of Edgar a uniform rule was introduced[d]. Thirty-three were to be chosen in every "Byrig," Twelve in smaller Townships and in every Hundred: a power being nevertheless given of increasing their number. These officers were to be sworn to the due discharge of their duty. A Jurat took an oath, that neither for gift, nor for love, nor for hatred, he would deny bearing testimony to those things which he had witnessed, nor declare any matter in testimony, except what he had seen or heard; and it followed, that the evidence or record of these official witnesses could not be rebutted by the declaration of the party, or of his compurgators. The presence of two or three attesting Jurats was necessary to insure the stability and legality of every purchase, sale, or other transaction relating to property, if they could possibly be obtained. An exception was allowed in case of an unexpected bargain made on a journey; but then the buyer was compelled to declare his purchase to the Jurats within five days after his arrival; and,

or of the Portreeve, the Priest, &c.

Jurats or sworn witnesses appointed pursuant to a statute enacted by Edgar.

[a] Lothar and Eadric, §§ 5, 16.

[b] Edward, I. § 1. Athelstane, I. §§ 10, 12.

[c] See Part II., *Proofs and Illustrations*, p. 169, note a, in which this law is printed from the Spelman Manuscript now in the possession of Hudson Gurney, Esq.

[d] Edgar, II. §§ 6, 7.

Part I. Ch. VI.

with their concurrence, he was required to depasture the beast in the common fields or leasowes of the Town. If he failed to do so, the Townsmen were to denounce him to the Ealdorman of the Hundred, and the beast was forfeited; half the value belonged to the "Landlord," and half to the Hundred[a]. If the Townsmen omitted to inform against the offender, they incurred a wite or penalty, and the Herdsman was to be scourged for his connivance. When such a default had taken place, there was no excuse. The witnesses might be named, and their testimony might be satisfactory; but still the cattle was forfeited, as a punishment for the omission of the legal declaration. If an appeal was made to the Jurats and found to be untrue, the offender was to be deemed a thief; he was punished with the greatest severity; he suffered death, and forfeited all his property[b].

Pains and penalties incurred by the owners of cattle, who omitted to make the declarations required by law.

These regulations, which embodied a species of municipal magistracy, not only in the walled Towns, but in the open Country, and created a class of public functionaries who were required to interfere in all private dealings, appear to have been again altered under the Danish Kings. Canute directs that no chattel, "living or lying," above the amount of fourpence, shall be bought or sold, whether within the Burgh or in the upland Country, unless in the presence of four good men and true. A further variation was introduced by the Conqueror, according to whose laws, three witnesses only were required; but all dealings were now to be confined to Cities, Boroughs and walled Towns. In secured places alone, the Cheap or Market was to be held, and there the power of jurisdiction and legal testimony was confined by the law. The formal portions of these laws fell into desuetude before the reign of Henry II., but so much of the old Saxon doctrine subsisted in the common law, that the sale in "fair or market," which exonerated the holder of stolen goods from suspicion, was required to be made before the Bailiffs and Good men, who could testify that the toll had been duly paid, without fraud or concealment[c]. From the spirit of the Anglo-Saxon law, we derive the modern statutes which regulate the transfer of that

Alterations of the laws of Edgar and Canute by the Conqueror.

Partial subsistence of the Anglo-Saxon law.

[a] Edgar, II. §§ 7, 8, 9, 10.

[b] Edgar, II. § 11.

[c] Canute, II. § 22. Laws of William the Conqueror, XLV. Part II., *Proofs and Illustrations*, p. 145. Bracton, lib. iii., de Corona, cap. 32. Mirror, chap. 1. See also Blackstone, vol. ii. p. 449.

kind of property, which, as in the Saxon times, is much exposed to rapine and depredation[a].

Whilst the regulations of the market were thus established for the purpose of preventing the fraudulent alienation of stolen property, another very singular institution was created, intended to preserve the public peace, and to enforce the obedience of the people to the provisions of the law. Peculiar to England, the "Frankpledge"[1] has been a favourite theme of admiration; the patriotism of our legal writers has induced them to bestow the loudest praises upon that "masterpiece of judicial policy," which, as it is said, rendered "each man answerable to his "immediate Superior, for his own conduct and for the acts of "his neighbours"[b]; and the exalted imagination of the historical enthusiast has framed many a fair theory of Utopian reform, whilst wrapt in the visions which displayed the symmetrical courts of an elected Magistracy, formed by and out of the people, rising above each other in harmonious progression and numerical order, and invested with an increasing share of authority and power[c]. The law of Frankpledge, however, when minutely examined, loses many of the characters which have been bestowed upon it by legal or political zeal or fancy; and instead of constituting a judicial hierarchy, and resulting from the exercise of constitutional freedom, we must view it as a system of strict espial, subordination and coercion, and divided into two branches, which must be carefully distinguished from each other: the first

The "Frankpledge."

Mistaken opinions respecting the intent and character of the Frankpledge.

Divided into two branches, the Seignorial Freeborh, where the Lord was permanent "Borh," or pledge for the appearance of his retainer or manupast;

[a] 1 and 2 Phil. and Mar., c. 7, "an Act against buying of stolen horses." 31 Eliz., c. 12, "an Act to avoid horse stealing."

[b] 4 Blackstone, p. 412.

[c] "An Account of the Constitutional English Polity of Congregational Courts, and more particularly of the great annual court of the people, called the View of Frankpledge, wherein the whole body of the Nation was arranged into regular divisions of Tythings, Hundreds, &c. The happy effects of that excellent institution, in preventing robberies, riots, &c., whereby, in law, it was justly deemed 'summa et maxima securitas'; that it would be equally beneficial to all other nations and countries, as well under monarchical as republican establishments; and that, to the English Nation in particular, it would afford an effectual means of reforming the corruption of Parliaments by rendering the representation of the people perfectly equal, in exact numerical proportion to the total number of householders throughout the whole Realm." By Granville Sharp. 2nd Edition. London, 1786.

Part I. Ch. VI.

being the seignorial or personal liability of the superior, which rendered him the permanent surety for the appearance of his vassal, retainer or inmate; and the second, the collective or mutual responsibility of the villeinage, as included in their Tithings, associations which, in the Saxon era, were of unequal extent, according to the custom of the country, Ten being the smallest number of which a Tithing could be composed, and from whence it derived its name.

and the collective Freeborh, consisting of certain associations of the Ceorls or Villeins, who were mutually "Borh," or pledges for each other; which Associations were called Tithings, ten being the smallest number of which they were composed. (See above, p. 16.)

The dependence of the various classes of the community formed, as we have before observed, the basis of the Anglo-Saxon law; and the peculiar obligation, which rendered the Lord the surety for the appearance of his "men," or vassals, just as every householder was charged with the production of the "Agen hyne," is defined with sufficient clearness and precision. "Let every Hlaford have his retainers in his own pledge; and if "they be accused, let them answer in the Hundred according to "law."[a] If the party accused absconded, the Hlaford forfeited the amount of the "Were" to the King. If it was laid to the charge of the Hlaford, that the criminal had escaped by his connivance, then the superior was to clear himself by the compurgatory oaths of five Thanes, his Peers, he being the sixth; when this proof failed, the "Were" was exacted, as before mentioned, and the fugitive became an outlaw[b]. From other portions of the Anglo-Saxon code, the general responsibility of the Lord for his vassals, and still more, for those whom we may term his subjects, may be ascertained; this responsibility being conformable to the British law, according to which, every Foreigner and every vassal was to be under the oath and pledge of the Lord of the district, and of his Lord and Master[c].

Seignorial Freeborh or Frankpledge, being the responsibility of the Lord for his Vassal, &c., defined by the Anglo-Saxon law.

Uncertain antiquity of the collective Frankpledges or Tithings;

The nature of the obligation accords with the general policy of the nations amongst whom it prevailed; but neither the date, nor the origin of the second portion of the Anglo-Saxon system, namely, the pledge resulting from the collective Freeborhs or Tithings, can be ascertained; though it appears that this legal Clanship, if we may so denominate the associations of the Twihynde class, was gradually exchanged, at some unknown ancient period, probably anterior to the Conquest, for the ancient union

which appear to have replaced the responsibility of the Sept or Clan.

[a] Laws of William the Conqueror, LII.

[b] Canute, II. § 28.

[c] Triads, Ancient Welsh Laws, p. 34. Transactions of the Cymmrodorion, p. 111.

formed by real or traditionary consanguinity. The Danish invasions, which caused the country to retrograde in civilization, must also have greatly affected the ancient policy, both by introducing new Lords, and by confusing the lineages of the people; and it appears, that under the triumphant government of Athelstane, endeavours were made to give greater efficacy to the laws which required that every person of the inferior classes should have a Lord in the Earl-kind ranks of the community. Theft and rapine had increased; and the declaration, that no mercy should be extended to any thief above twelve years of age, who was taken with the mainour, or in possession of the stolen property, explains the circumstances which called for a system of legislation more rigorous than that which had hitherto prevailed. The Lord, convicted in the King's Court of shielding his offending vassals, was to restore the value of the stolen property, in addition to a heavy fine which was imposed upon him; the earlier laws, which forbade one Lord to receive the homage of the vassal of another, were renewed. And, in the chapters added to the statute by the Witenagemot of Kent[a], it was provided that every man should keep his villeins in his own pledge against theft; and if they were so numerous as not to be all under his personal inspection, he was then to appoint a Reeve in each Township, to coerce them on his behalf, an enactment which shews the extent of the dependence of the Ceorls upon their superiors. We may trace the rapid subjection of the spirit of clanship from the period when the members of the "Maegth," who had refused to make compensation for the known and declared manslayer, were prohibited from affording him the slightest comfort or protection[b]. In the statute of Edgar, it is stated, as a general law, that every man, both within Burgh and without, was to find sufficient "Borh," who would produce him to justice, or answer for the penalty[c]. Ethelred, in a law to the same effect[d], designates the persons so circumstanced, as "Freemen"; but the French text of the Conqueror's laws, "seient tuz les vilains en franc plege,"[e] explains the Anglo-Saxon statute, and proves, that however limited the rights of the Ceorls may have been, they were reckoned amongst the freemen of the Anglo-Saxon Commonwealth.

Ancient laws of responsibility renewed and enforced under Athelstane.

Laws enacted by the Witenagemot of Kent, that every Lord should keep his villeins in his own pledge, or appoint a Reeve to coerce them in his stead.

In the passages above quoted, it will be observed, that hitherto

[a] Athelstane, I. §§ 1, 2, 3, 8, 22; II. § 1.
[b] Edmund, II. § 1.
[c] Edgar, II. § 6; III. § 1.
[d] Ethelred, I. § 1.
[e] XX. Part II., p. 134.

Part I. Ch. VI.

none have been presented to the reader which cannot be distinctly applied to the personal pledge of the superior; and if they denote the collective "Freeborhs" of the villeinage, the ambiguity of the expressions conceals the meaning from our view. An institution, however, was formed in the time of Athelstane, which has been considered as illustrating the origin of the Decennary communities. In a state which, like the Anglo-Saxon Commonwealth, is loosely compacted, the execution of the laws must depend upon the good will and alacrity of the people. Thus, after the statute of Athelstane was enacted, each jurisdiction was allowed to devise the means of carrying its provisions into execution; and the by-laws, which were enacted in the "Burgh" of London, for the better observance of the general statute, shew the manner in which it was there enforced. The rigour of the law is increased by this singular document, which incorporates the tenour of the statute. Other regulations are expressed with great obscurity. They indicate, however, that a common stock or fund was raised for the purpose of making compensation for such cattle as might be stolen, and also for assisting in the recovery of property belonging to the members of the gild. Ten men were to be reckoned or told together, the "eldest," or senior having the superintendence of the other Nine. To these was to be associated an Eleventh Man, chosen by the men of the "Hindena," a term, which, as it can only be interpreted by conjecture, I may, perhaps, be allowed to consider as designating the Hinds or Ceorls, and who was to summon the others whenever their duty was required. As far as the very confused and difficult wording of the original law can be understood, the men so selected constituted an acting committee of police, who were to direct the pursuers of the robber; to collect and keep the money contributed by the men of the "Hindena"; and to make such payments as became due under the regulations of the gild. The document is of great value in demonstrating the extent of self-government amongst the Anglo-Saxons, and the manner in which the people resorted to associations amongst themselves for the protection of their property. Still it furnishes no proof of that mutual responsibility which distinguishes the collective "Freeborhs." Nor is this obligation clearly pointed out even in the law of Canute, which declares that every "Freoman,"[a]

Supposed origin of the Tithings, as deduced from certain associations created by the Anglo-Saxon by-laws of London.

Laws of Canute apparently noticing the Tithings.

[a] Canute, II. § 19. This passage, here quoted, will be found in Part II., *Proofs and Illustrations*, p. 167; but it must be recollected,

above twelve years of age, who wishes to be worthy of the privilege of compurgation, shall be brought in the Hundred and the "Tithing," whether he be a householder or a "Folger." A second paragraph, repeating that every one shall be brought into the Hundred and placed beneath the "Borh," who shall produce him in justice, rather refers to the relation of Lord and Manupast[1]; and the statutes of the Conqueror being, as we have before observed, only versions of the Anglo-Saxon laws, are not more explicit or conclusive.

Collective Frankpledge; description of this institution collected from the Legal Treatises and Records between the reigns of Hen. II. and Ed. I.

Usage and tradition, therefore, must explain the law, and we must be contented to consider the Free-pledge, as it existed after the Conquest, in East Anglia, Kent, Wessex and many parts of Mercia, in which districts the nation was divided into three classes, corresponding, in some measure to the Twelfhynde men, the Sixhynde men, and the Ceorls or Twihynde men, of the early Anglo-Saxon era. The first class consisted of "Archbishops, Bishops, Earls, and Barons," all "who had Sac and Soc, and Toll and Team"; and who, being deemed entirely trustworthy before the law, were allowed also to become Sponsors for their military followers, whether Knights holding by tenure, or soldiers receiving pay. Such a Lord was also answerable for his own immediate Manupasts, the retainers, who feasted at his board, and were sheltered beneath the roof of his Hall, and whom he was bound to produce in justice when required; or to be liable for the legal forfeiture[a]. The third class was composed of the Burghers, and of the Ceorls or Villeinage, who, as it will be recollected, were freemen, according to the Saxon law, all of whom were enrolled in their Decennaries, Tithings, or associated Freeborhs[b]. The collective Free-pledges were not formed according to a uniform system. In East Anglia, in Middlesex, in Kent and in many Shires of Mercia, the Villeins were told off into bands, of not less than ten, commanded by the Chief Pledge or Senior of the Borh,

Collective Free-pledges, sometimes independent of any territorial divisions, being bands or companies, named after the Chief Pledge or Borsholder (i.e. Borgesealdor), by whom they were commanded;

that the word "Freoman," employed in the original, is to be understood as equivalent to Ceorl or Villein.

[a] Placita Coronæ, 10 Ric. I. m. 1.

[b] The authorities for the description of the Freeborhs, are Bracton, lib. iii., de Corona, c. xi. and xii.; Britton, c. 29; Mirror, c. i. § 17; the Fragments of Anglo-Saxon Customs in the Holkham MS. and the quoted Records: but the ancient legal writers do not entirely agree with each other, nor with the Records. See Part II., *Proofs and Illustrations*, pp. 167–175.

Part I. Ch. VI.

from whose personal appellation the "Tithing" or "Borh" was named, just as in common language a company of soldiers is called after its officer. An ancient fragment of a Saxon custumal shews that the number might be greatly extended by the custom of the country, and, occasionally, the whole Township formed but one Frankpledge, to which the name of Tithing was given; in some of the Shires of Wessex and Mercia, we find them used as convertible terms, yet not so but that it may be perceived that the "Villa" was the designation of the district; whilst the "Teothung" was the proper denomination of the inhabitants which it contained[a].

e.g. "Francum Plegium Hugonis de la Grave," "Decenna Thomæ de Weston," &c.; sometimes including all the inhabitants of a Township, which was hence called a Tithing.

The second, or intermediate class, who were neither Pledges for others, nor in pledge themselves, consisted of those whose freehold property was of sufficient amount to be considered as a permanent security for their good behaviour, and equivalent to a "Freeborh." The order of Priesthood was, in like manner, accepted as the pledge of the Ecclesiastic[b], who was also controlled by the jurisdiction of his Ordinary. Women, who were supposed to be under the domestic government of their male relations or husbands, were also exempted from the Freeborh. But with these exceptions, to which may be added the temporary excuse arising from itinerancy, the men of the Township were not to receive any resiant above twelve years of age, unless he was either numbered in a collective Freeborh, or entitled to claim the protection and warranty of the natural Magistracy of the land.

Persons who were exempted from the Free-pledge, both seignorial and collective, if their property was of sufficient amount to be considered as a permanent security for their good behaviour.

As the inquiries into the origin of the Anglo-Saxon laws are so frequently explained by the customs of the Continent, it has been supposed, that "the division of a village, with its corre-"sponding territory, into ten Wards or districts,"—for this version has been given to the decennary system,—"probably "arose in those European Kingdoms which had first attained a "regular form, and was afterwards extended to the Saxons in "England,"[c] after having been adopted by all the barbarous nations who settled in the provinces of the Roman Empire. This hypothesis proceeds, in the first place, upon the assumption

Collective Free-pledge supposed, but erroneously, to exist amongst the continental nations.

[a] Magn. Rot. 5 Ric. I. Warr. and Leyc. Madox, Exch. 393. Plac. Coronæ, 10 Ric. I. m. 8. Rot. Itin. Stafford 5 John. Rot. Itin. Kanc. 11 Hen. III. Rot. Itin. Devon. 22 and 23 H. III. Kirkpatrick's Collections in the Office of the Town Clerk of Norwich.

[b] Bracton, as above.

[c] Millar, English Government, vol. i. p. 176.

of a regular territorial subdivision, which certainly never existed, either in England or on the Continent. A functionary, entitled the Decennarius, is mentioned in the Frankish laws, but so infrequently and so transiently, that it can only be collected that he acted as a species of Seneschal, perhaps possessing a very limited judicial authority over the Serfs of the royal demesnes[a]. A Decania was a small territorial Government amongst the Lombards[b]; but it must be recollected, that it is neither the authority of the Chief, nor the decennary arrangement, which constitutes the peculiar character of the Anglo-Saxon institution, but the mutual responsibility of the individuals of the association: and that no similar incorporate or collective pledge is known to have existed on the Continent, may be inferred from the silence of one of the most learned of the continental jurists[c], who, in treating upon this liability, adduces no other authority, except the laws attributed to the Confessor. Decennaries, however, are mentioned in the Barbarian laws, and described as led forth to battle by their Decanus, who himself was subordinate to the Centurion[d]. He was, therefore, a Captain of Ten, the Teutonic armies being organized like the Host of Israel and the Roman Legion. The division is so obvious, that there is little difficulty in assuming its existence in the "Fyrd" or military levies of the Anglo-Saxons.

Decennarius, an inferior Magistrate.

Military Decennaries of the Barbaric Nations.

Until any earlier and better clue is found, by which the history of the English Tithings can be developed, it may be considered as possible, that their mutual pledge was superinduced upon an existing military organization, which, as well as the political

Collective Free-pledge, perhaps grounded upon a military organization.

[a] Capitulare Caroli Magni de villis, A.D. 800, §§ 10, 58. Capitula Pipini excerpta e lege Longobardorum, A.D. 793, § 2. [Capitular of Charles the Great concerning towns, A.D. 800, §§ 10, 58. Capitulars of Pepin excerpted from the law of the Lombards, A.D. 793, § 2.] These are the only passages of the capitularies, in which the Decanus is mentioned. The "Decanus" of Hincmar, Ep. 4, c. 15, and of Walafrid Strabo (apud Eccard ad L. Sal., p. 234), is a different officer, perhaps derived from the Roman Decemvir.

[b] Muratori, Antiq. Ital., vol. i. p. 520.

[c] Eichhorn, Zeitschrift, &c., vol. i. p. 177.

[d] LL. Bajuvariorum, tit. 5. Si quis intra Provinciam ubi Dux exercitum ordinaverit, sine Ducis jussione aliquid prædaverit. [Laws of the Bavarians, tit. 5. If any person within the Province where the Duke has called out an army, takes any booty without the order of the Duke.] LL. Wisigothorum, lib. ix. tit. 2.

Part I. Ch. VI.

dependence of Lord and vassal, became ancillary to the preservation of good order, at the period when the Anglo-Saxon Clans were so broken, that the ancient security derived from their incorporation ceased to be effective. There was no distinction between the Soldier and the Citizen, and the country was defended from rapine and spoil by Guards, who, whether called out to protect the Lieges against the foreign enemy, or to pursue the domestic robber or marauder, were equally arrayed as a military body, perhaps the only form in which a police can be unoppressive and effective. Watch and Ward on the King's highway was performed by four men, summoned from every hide in the hundred, mustered under the command of the Wardreeve, who, in consideration of this service, held his own land free from taxation, like the Thannadars, the ancient peace-officers of Hindoo villages[a]. These Wardens were personally liable for any act of negligence; they were fined, if the robber escaped with his prey[b]; every man performed military service in his turn, and as the whole Township was charged with the duty of enforcing the law within its bounds, it might appear that an additional security was obtained by rendering each band of the territorial militia answerable for the appearance of its members when accused of any of those crimes which the community was bound to repress. The laws which imposed upon the suspected person the obligation of defending his character by the compurgatory oaths of his fellow tithingmen, would also be easily deduced from the same obligation. Perhaps one argument in favour of this origin of the collective Frankpledge, may be found in the circumstance, that "Ward" and "Teothung" were synonymous in the ancient law; and, as like causes continue to produce the like effects, it is important to remark, that the military organization, deduced from the Anglo-Saxon law, and improved by the statute of Winchester, thus passed into the service of justice. The Constable, the mailed leader of the militia of the Hundred in the reign of Edward I., became a rustic peace-officer before the sixteenth century; and the military "Conservators of the Peace," whose first avocation was the pursuit of offenders with the power of the county, armed with spear and sword, were gradually transformed into a tranquil provincial Magistracy. Nor

Military Police of the Anglo-Saxons.

"Stretwarde," or the duty of guarding and patrolling the King's highway, performed by four men from every hide of the hundred, under the command of the "Wardreeve."

Military organization, founded upon the Anglo-Saxon law, and improved by the statute of Winton, 13 Ed. I., converted, in process of time, into a mere Police Establishment, the Constable being originally a leader of the levies. And the Conservators of the Peace (whose powers afterwards merged in the commissions

[a] Heber's Journal, vol. i. p. 224.

[b] Laws of William the Conqueror, XXVIII. Part II., *Proofs and Illustrations*, p. 138.

is it improbable, but that the collective Frankpledge may have been more rigidly enforced by the Conqueror than under the Anglo-Saxon government, and extended by him perhaps beyond its original boundaries, it being favoured by the government, as an efficient preventive police, and also as the means of obtaining a firmer hold upon the obedience of the people.

of Justice of the Peace) being, at first, military commanders.

There was a political end answered by this institution. When the "View of Frankpledge" was held[a], the members of each Decennary took the oath of allegiance, in which they swore that they would be faithful and true to the King and his heirs, and bear him faith and loyalty, of life and limb and worldly honour, and defend him against all his enemies[b]. This was the oath which the Conqueror imposed upon all his subjects who were free, that is to say, not in "Theowet" or slavery[c]. All those who were "settled upon the land," throughout England, no matter whose Vassals they were, took this oath, and became the Vassals, as well as the subjects of the Conqueror[d]. Even when a Gild or Sodality was established, the promise of obedience to their "worldly Lord, William" constituted the first clause[e] of the

Oath of allegiance, taken by all who were enrolled in the Frankpledge;

being the same oath as was imposed by William the Conqueror upon all his subjects.

[a] The "View of Frankpledge" must not be confounded either with the Sheriff's Tourn, or with the Court Leet, in which it was usually held. There was no View of Frankpledge, either in the Courts Leet of the Northern Baronies[1], or in the Northern Wapentakes; though, in other respects, the jurisdiction was entirely the same with that of the Southern Lordships and Hundreds. This distinction is important, because the View of Frankpledge has been considered as the foundation of the Court Leet and Sheriff's Tourn; though its non-appearance in the Courts of half the Island, shews that it is only incidental to the tribunal, and not necessarily united to the inquisitorial jurisdiction of the Jury. Part II., *Proofs and Illustrations*, pp. 171–174.

[b] Fleta, lib. iii. c. 16. Mirror, c. ii. § 9.

[c] Carta Will. Conquestoris de quibusdam statutis, § 52. [Charter of William the Conqueror concerning certain statutes.]

[d] In the Sax. Chron. A.D. 1086, they are styled *ealle þa land sittende menn þe ahtes wæron ofer eall Engleland*. In German, *land Sassen*. They are divided by Eichhorn into *Freie Land Sassen*, Tenants holding of the Nobles, and nearly corresponding to the Anglo-Saxon *Sithcund men*; and *Hinter Sassen*, a class which includes the Burghers of the Towns and the Boors of the upland Country, the Ceorls of the Anglo-Saxons.

[e] Rules or Statutes of the Brotherhood founded by Æglewy, Abbot of Evesham, &c., about 1072; Hickes, Dissert. Epist. 19.

Part I. Ch. VI.

compact, which united the brethren in a communion of good works, of pious suffrages and of prayers. Since the oath was taken on occasions so little connected with worldly policy, we may infer that it was repeatedly exacted; and that when the Commonalty were arrayed and marshalled for the purpose of enforcing their obedience to the law, the Conqueror may have particularly directed that they should renew their pledge of fidelity to their common Sovereign.

Collective Frankpledge, not universal throughout England.

Most of our historians have considered the collective Frankpledge as universal throughout all England, and the ancient legal writers do not notice any exception to the general rule. But, from the more certain testimony of records, we can collect that it did not exist in the Shires which constituted the ancient Kingdom of Northumbria[a]. The men of Salop equally claimed to be excepted from the Tithing[b]; and there were some, at least, of the Mercian Burghs into which it was not introduced[c]. To account for its non-existence, various conjectures might be hazarded, and the obliteration of the system by the Danes, or its creation whilst the Sovereigns of Wessex had only a paramount sovereignty over Northumbria, would equally explain its non-appearance in that realm. Its partial absence in Mercia may have resulted from local customs. But the Freeborh, though it facilitated the execution of the laws, did not make any alteration in their general policy; the pledge concentrated the responsibility of the community, but it did not create the duty; for in the Shires where the collective Free-pledge did not exist, the whole responsibility of the police was cast upon the inhabitants of the territorial district[d]. If the men of the Township failed to pursue the murderer with hue and cry, they were liable to an amerciament for the escape[e]; the older laws considered the same neglect as a contempt of the Royal authority[f]; their obligation was not

No variation of policy occasioned by the absence of the collective Frankpledge, the Township incurring the liability which would have attached to the Decenna.

[a] Rot. Itin. Westmorland, 20 Ed. I.

[b] Rot. Itin. Salop. 40 Hen. III.

[c] Bristol and Worcester, for instance. Rot. Itin. Wygorn. 5 Hen. III. Rot. Itin. Glouc. 5 Hen. III. m. 9.

[d] Magn. Rot. 16 Hen. II. Rot. 3. Northumbr. Madox, Exch., p. 385.

[e] Magn. Rot. 14 Hen. II. Rot. 5, 6. Magn. Rot. 7 Ric. I. Rot. 1. Kanc. Magn. Rot. 32 Hen. II. Rot. 12. Dors. and Somers. Madox, Exch., p. 386.

[f] Laws of William the Conqueror, XLIX, L. Part II., *Proofs and Illustrations*, p. 148.

discharged even when they had exerted themselves to the utmost to secure the offender, who took refuge in the Sanctuary[a]: and if the thief and the housebreaker were not apprehended, the Township or Borough became subjected to the penalty. When, according to the custom, a resiant ought to have been enrolled in a collective Frankpledge, and the Township had neglected to enforce his being in "Borh," though no crime had been committed, or to raise the hue and cry, if he became a delinquent, they were equally amerced for their negligence or inattention[b]. Such were the obligations of the Township: those of the Freeborh, whether resulting from seignorial pledge or from mutual liability, were of the same character. In the Rolls of the Justices Itinerant, we find that the responsibility of the Lord, bound to produce his Manupast, is enforced nearly in the manner prescribed by the enactments of Canute, though the Saxon law was then obsolete and forgotten. As to the collective Freeborhs, whenever any one of their number was "defamed," or presented, by the vehement suspicions of the "Country," they were enjoined to produce him to answer at the bar[c]. If a crime had been brought home to him more distinctly, by "Appeal," they became special bail for his appearance[d], in the same manner as if he had been accused by the voice and fame of the "Patria."

Townships amerced when they had harboured any resiant not enrolled in the Frankpledge.

Liability of the collective Frankpledge.

Considered in this simple form, the Frankpledge will lose many of the qualities which have been bestowed upon it, and it is resolved merely into a modification of the general liability of the community. Unconnected with jurisdiction, still less with any popular privilege, the Tithing was a Sept, created, not by consanguinity, but by the act of the law, first probably confined to particular districts, and afterwards extended to larger portions of the community.

[a] Rot. Itin. Westmorland, 40 Hen. III. m. 11.

[b] Rot. Itin. War. 16 Hen. III. m. 7. Rot. Itin. Wygorn. 5 Hen. III. Rot. Itin. Salop. 40 Hen. III. Rot. Itin. Devon, 22 Hen. III. Rot. Itin. Ebor. 15 Hen. III. Magn. Rot. 26 Hen. II. Rot. 3. Berrochsc. apud Madox, Firma Burgi, p. 64. Magn. Rot. 33 Hen. II. Rot. 14. Berrochsc. Magn. Rot. 7 Ric. I. Rot. 19. Staff. Magn. Rot. 31 Hen. III. Rot. 3. Norwic., Madox, Exch. as above. Bracton, lib. iii., de Corona, cap. i.

[c] Magn. Rot. 7 Ric. I. Rot. 15. Warr. and Leic. Magn. Rot. 22 Hen. II. Rot. 11 a. Staff. Magn. Rot. 26 Hen. II. Rot. 2. Glouc. Madox, Exch., pp. 385, 386.

[d] Rot. Itin. Kanc. 2 Hen. III.

Part I. Ch. VI.

Crimes were divided, by the Anglo-Saxon jurisprudence, into two classes. Inexpiable crimes, for which death was inflicted without remission; and those for which the offender might redeem his life or his liberty, by the payment of the stated penalties. No compensation was accepted from the traitor, who had conspired against his Sovereign or his liege Lord[a]. Desertion from the banner of the military Leader was equally penal. Open theft, when the offender was taken with the mainour, was an inexpiable crime. House-breaking belonged to the same class: and murder was punished by death; but if the slain was fairly killed, without malice prepense, then the crime was only manslaughter, and the payment of the legal fines appeased the vengeance of the relations, and satisfied the claims of the community. We are warranted by the laws, in taking this distinction between murder and manslaughter, though it may be difficult to give an accurate definition of all the circumstances by which bloodshed was justified. An affray at a banquet was considered as an adequate excuse; and he who laid his enemy low in fair and open fight, though accompanied by a violation of the peace, was allowed to tender the legal blood-fine. Pecuniary commutations for crimes were never formally abrogated; and as, according to the common law, an appeal of murder was a civil suit, the price of blood might still be exacted. There was neither law nor custom to prevent the kinsman from receiving any sum which he could exact from the convicted criminal, since the Plaintiff had the power of pardon. It is true, that this was after trial; but some kind of adjudication probably took place amongst the Anglo-Saxons before the "Were" could be required. As the law now stands, damages recovered in a civil action, for an assault or any personal injury, not being a felonious act, correspond to the Anglo-Saxon "Were"; whilst we inflict the "Wite," in the shape of the fine imposed upon the traverser, if he is indicted for the breach of the peace. In other words, we have divided the remedial process of the Anglo-Saxons, and not always to the advantage of the Individuals belonging to the humbler classes of society, whose avocations and habits expose them most to violence, and who, if they seek redress, are driven either to encounter the costly intricacy of a civil suit, or to a prosecution in the name of the King, from which the aggrieved parties cannot legally derive any compensation for the harm which they have sustained.

Crimes divided by the Anglo-Saxons into "Bot-leas," or inexpiable offences; and those for which compensation could be accepted.

"Were," a compensation, now received in the shape of damages. (See also above, p. 25.)

[a] Alfred, Preface and § 4. Ethelred, I. § 2. Canute, II. §§ 54, 61.

Theft was an offence of a deep and disgraceful dye. All the Germanic Tribes held this crime in great abhorrence. A thief, in the language of the capitularies, was "unfaithful to the Kingdom of the Franks." Nearly the same expression occurs in the Anglo-Saxon and Saxon laws, in which he is said to be "untrue to the Hundred," or "untrue to the people."[a] At one period, wife and child, and every inmate, above the age of ten years, passed into slavery, if they assisted in the concealment of any stolen property[b]; for the Anglo-Saxon law of larceny included two degrees of offence: the act of "open theft" or rapine, which, as has been before observed, was irremissible; and the offence incurred by the individual who was found in possession of the stolen property, in which case, however, whether he was the thief or the receiver, his crime might be pardoned by the payment of a penalty. Under Canute, the law, which had been modified from time to time, sustained further alterations[c]. For the first offence, compensation was to be made to the injured party by restoring twice the value of the stolen property, besides the "Were" to the Lord; and if the theft had been committed by a Serf, he was branded with a hot iron: but for the second offence, the "Theow" suffered death; the Freeman or Ceorl was to lose his hand or his foot, or both, according to the magnitude of the crime; and if these mutilations were not adequate to appease the vengeance of the law, the eyes of the wretched culprit were to be plucked out, or his nose and lips cut off, or he was to be scalped; punishments which form a singular contrast to the merciful sentiments evinced by the same code, and expressed with the most energetic simplicity. "He who has the "power of judgment, should earnestly think on that, which he "implores for himself, when he prays 'forgive us, Lord, our "'trespasses, as we forgive them that trespass against us'; and "we forbid that Christian men be put to death for trivial causes; "nor should we rashly destroy the Lord's creation which He "redeemed so dearly." The sentences threatened by the law were worse than death; but in countries thinly peopled, chequered with wastes and wilds, affording the ready means of escape and concealment, and where the rude and solitary habitations and sequestered domains of the landholder were extremely liable to the attack of the robber, it might be deemed necessary to protect

Theft, severity with which it was punished. The thief stigmatized in the Capitularies, as being "infidelis regno Francorum"; and in the Saxon laws, as "Folc-ungetreu."

Increased severity of punishment under Canute.

[a] Canute, II. § 30[1].

[b] Ina, § 7.

[c] Canute, II. §§ 26 ff.

Part I. Ch. VI.

the rights of property by punishments which, to us, appear grievous and disproportionate beyond all measure; and there are some who may think that even our present civilized Criminal Code retains more of its ancient barbaric severity than is warranted by the general state of society. The Anglo-Saxon law was mitigated, by allowing the offender, if he could, to make compensation; otherwise, his services as a slave were to be accepted by the injured party. A justification for inflicting the punishment of death may be conceded to the legislator, in those cases where the probable consequences of the crime will lead to bloodshed. And, as the resistance to open violence, or the struggles made by the robber to retain his spoil, were most frequently followed by the mutual fray, the ancient law, which authorized the summary decapitation[1] of the criminal, may be reprobated as harsh, though not altogether stigmatized for its barbarity: it proceeded by military execution, sudden, appalling and effective. The fearful mutilations which rendered the maimed and miserable offender a ghastly spectre, visiting the haunts of living men, have long ceased to be the terror and warning of the wicked; but it is hardly a paradox to assert, that humanity has not gained greatly by the abolition of these cruel and revolting punishments; and that by adopting a code, apparently more mild, we have not diminished the mass of suffering and pain. It is one of the evils resulting from a polished and refined state of society, and by which many of its advantages are dearly purchased, that the higher classes become insensible to the afflictions of their inferiors, when concealed from their view. Let us assume the existence of a statute enacting that any person suspected of petty larceny should forthwith have his right hand struck off in court, so as to disable him for the remainder of his life. Under this legislation, our Magistrates, constituted as they now are, would certainly entertain great aversion towards the infliction of so disproportionate a punishment. The sight of the bleeding, maimed limb, would sicken them. It would hurt their feelings to sit upon the Bench and witness the agony, and listen to the shrieks and moans of the felon; for their own sakes, as well as for his, they would investigate the case with tenderness and caution; and it is probable, that in order to reduce the number of offenders, they would use very earnest endeavours to establish such a domestic police as would lessen the temptations, both physical and moral, which are rife in the land, and to diminish the opportunities which lead to the commission of crime.

But what is the present practice of the law of England? A child, to whom a trivial offence is imputed, may be committed by the magistrates of a corporation to a dungeon, so loathsome, vile and insalubrious, that when he is acquitted, after an incarceration of many months, his health will be irretrievably affected, and for the remainder of his days he will be condemned to drag on a painful and useless existence. Nor is this fate the worst which awaits even the innocent. Another, who, from his poverty and abandonment, is unable to procure the required bail, may undergo protracted confinement, before trial, in a prison, allowed with the full knowledge, concurrence and assent of the constituted authorities of the metropolitan county, to become such a school of vice and profligacy, that when declared guiltless of the offence of which he was accused, he is dismissed a hardened ruffian, ruined in character, body and soul; destitute of the means of subsistence; tutored in wickedness, to which, before his commitment, he was a total stranger; and immediately becoming liable to the vengeance of justice. A generation has nearly passed away since the statue of Howard[1] was raised in the Cathedral by the voice and vote of the Legislature; and England proudly claims the glory of his unwearied charity and philanthropy. Praise is easily bestowed: the vain honours of the cenotaph have been rendered by the chisel of the sculptor; but the task of following the precepts of the martyr of humanity requires sacrifices, which, as yet, we have been unwilling to perform. And the marble cenotaph will stand as a monument of the reproach of England, until those who could rescue so many of their fellow-creatures from destruction, shall have redeemed the country from the guilt incurred by their permission and encouragement of the most shameful abuses, which degrade the national character and debase the law.

CHAPTER VII.

Summary Punishment of the Offender taken in open delict—Infangthief—Rules by which the Franchise was restrained—Presentments of Crimes by the Thanes of the Hundred—by the Men of the Township—Appeals—Compurgation or Wager of Law—Battle Trial—Ordeal—Torture.

Summary Punishment inflicted by the old English law upon Criminals taken in open delict;

WHEN a capital offence was flagrant, committed in open day, and under such circumstances as to render the act capable of instant and indisputable proof, no further trial was required: no evidence was discussed, and no defence was allowed. Mercy was never extended to the outlaw; he was said to bear a "wolf's head," and, like the wild beast to whom he was compared, he was slain whenever he approached the haunts of humankind[a]. He was also emphatically termed the "friendless man," one who had forfeited his country, who had lost the countenance of his kinsmen and the protection of his King. He had broken the compact which united him to society. Every hand might be raised to strike him; none, to revenge his fall. If a thief was apprehended, "hond-habbend,"[1] and "back-barend," or in actual possession of the spoil, he was hanged or decapitated by his pursuers, without respite or delay[b]. Similar proceedings took place with respect to the murderer[c]. If he was found standing near the corpse with the bloody weapon in his grasp, no witnesses could be heard, for the purpose of explaining away a token, which, according to the average of human probability, was necessarily the accompaniment of the transgression. Nor did the Anglo-Saxons stop at this point; for, when they legislated concerning theft, they established that many circumstances of suspicion might be equivalent to evidence. A stranger lurking in the woods, who

in which case no further trial was required.

Artificial presumptions raised by the Anglo-Saxon law, and considered as equivalent to positive evidence.

[a] Dialogus de Scaccario, lib. ii. § 10. Bracton, lib. iii., de Corona, cap. 12, §§ 1, 3; cap. 14, § 3. Magn. Rot. 7 Ric. I. Wircestrescira, Madox, Exch., p. 136.

[b] Rot. Itin. Lanc., 31 Hen. III.

[c] Bracton, lib. iii., de Corona, cap. 18. Rot. Itin. Salop. 40 Hen. III.

did not blow his horn, or otherwise proclaim that he was in distress and anxiety, was to be judged as a thief, though no other indication of crime could be alleged against him. He was condemned upon the inference supplied by the law[a], that such a wanderer could not seek concealment except for the purpose of perpetrating an unlawful deed.

Perhaps the name of legal procedure can scarcely be given with propriety to these plain and speedy modes of administering justice; they are acts deduced from the mere exercise of the passions natural to man, and the law consists only in the restrictions by which the powers of self-protection and defence were prevented from degenerating into wanton and unprovoked cruelty.

Limitations imposed by the King's Court, after the Conquest, upon the exercise of the Franchise of "Infangthief," or the right possessed by the Lord of the Township of inflicting summary punishment.

After the Conquest, we find that many limitations were imposed by the decisions of the King's court, which qualified the exercise of "Infangthief." Thus, to render the judgment legal, it was necessary that the culprit should be taken and executed upon "fresh suit," that is to say, upon the hue and cry of the Township, raised as soon as the crime was perpetrated, and followed without a moment's interval: or whilst he was still in the actual possession of the "mainour," or the articles which he had stolen. Unless one of these circumstances, at least, concurred with the caption, the territorial jurisdiction could not legally take cognizance of the crime. There might be no doubt of the guilt of the thief, yet the transfer of the chattel from his person, by gift or sale, was held to disqualify the local authorities. If one night was allowed to elapse before the felon had suffered death, then the King's court alone could legally punish him[b]. In some Shires, for the custom of the country regulated this, and every other legal proceeding, the presence of the "Grith-Sergeant," or "Land-Sergeant,"[c] seems to have been required to warrant the execution. Half Anglo-Saxon and half Norman, the first term literally implies a Peace Officer. These functionaries were sometimes appointed by the King; but they were not infrequently the military retainers of the Lord, whose tenure bound him to maintain the public tranquillity[d]: and the decollation of the

The Grith-Sergeant or Peace Officer, his presence necessary in some Shires for the purpose of legalizing the summary execution of Offenders.

[a] Ina, § 20.

[b] Bracton, lib. iii., de Corona. Rot. Itin. Devon, 33 Hen. III. m. 28. Rot. Itin. Westmorland, 20 Ed. I. m. 8.

[c] Rot. Itin. Lanc., 30 Hen. III. Rot. Itin. Westmorland, 10 Hen. III.

[d] Grant of the Master Sergeancy of Macklesfield, by Ralph, Earl of

Part I. Ch. VII.

"master-robber," by the feudal gens-d'armerie, will appear less wild and barbarous, if we recollect that it was the consequence of the martial institutions, to which the Country owed its safeguard and protection.

Any deviation from the law, expounded by the Judges, was followed by a seizure of the Franchise into the King's hands; in which case, the jurisdiction was not restored until the Lord had compounded with the Sovereign for his misdemeanor; or the irregularity was punished by an immediate amerciament of the suitors. That many or most of these principles were known to the Anglo-Saxons, is highly probable; some are indicated in their laws[a], others accord with the customs of Lothian, the faithful mirrors of Anglo-Saxon antiquity. Anterior to the Conquest, however, the high authority which became vested in the Curia Regis, as instituted, or at least new modelled by the Anglo-Norman Kings, did not exist; and the restraining laws can have possessed only a slight degree of efficacy. But as the Government became settled, the Supreme Courts constantly endeavoured to discourage the Territorial Franchises, and the paramount authority of the King's Justices and Conservators of the Peace had the effect of causing them to fall into desuetude. Beyond the Tweed, where the same causes were not equally active, the Royal authority did not extinguish the rights of the minor Dynasts: and the "pit" and the "gallows" marked the rank of the Baron, until the abolition of the heritable jurisdictions. In England, the records and annals of the law have not furnished any instance of the exercise of "Infangthief" after the reign of Edward III.[b], except in one northern Borough, Halifax[1], where a judicature, grounded upon the Anglo-Saxon Custom, subsisted until a comparatively recent era[c].

(See Chap. IX.) Criminal jurisdiction, subsists in Scotland till the abolition of the heritable jurisdictions in 1747: falls into desuetude in England about the reign of Ed. III., except in the Borough of Halifax, where the old law of "Infangthief" was retained (but with some modification) as a local law.

Three modes of Arraignment amongst the Anglo-Saxons, viz.

When the nature of the crime forbade its summary punishment, there were three modes by which the criminal might be brought to judgment. According to the first process, the offence might be denounced by, or on behalf of, the community. If the

Chester. Inq. post mortem Rogeri de Davenport, 16 Ed. I. Ormerod, Cheshire, vol. iii. p. 35.

[a] Ina, § 73.

[b] A thief taken "cum manuopere," was hanged by the judgment of the Hundred of Reppington, about the 4th Ed. III.; Placita de Quo Warranto in Com. Derb., 4 Ed. III. Monasticon, vol. iii. p. 46.

[c] Quon. Attach., chap. 6.

Wapentake or Hundred impeached the offender, the suitors spake by the Twelve Chief Thanes, who, together with the Gerefa, were sworn that they would not accuse any innocent man, nor conceal any crime[a]. In the Heathen time, the Teuton swore by his good sword, the symbol of the Deity worshipped by his Scythian kinsmen. After the introduction of Christianity, the arms were consecrated by the Priest; and this custom continued in some nations till late in the fifteenth century. The declaration contained in the laws of Ethelred, that the Thanes were to take their oaths upon the Halidom[1], perhaps resulted from the anxious zeal of the Anglo-Saxons to obliterate all vestiges of their pristine idolatry. Such a presentment was made on behalf of the Hundred. The resemblance of the Twelve Thanes to a Grand Jury is sufficiently obvious; and the principal difference between the Anglo-Saxon Echevins and the modern Inquest of the Shire, seems to have consisted in the greater stability of the ancient Magistracy; who, judging from the analogies afforded by the Burghs, held their offices for a definite period.

I. by the presentment of the Twelve Chief Thanes or Echevins of the Hundred or Wapentake (see above, p. 80);

The Thanes constituted the Aristocracy of the Country, but the Ceorls possessed a power of impeachment, perhaps confined to individuals of their own class: for another mode of accusation arose from the joint charge of "three or four" men; and from the practice of subsequent periods, as well as from the Scottish law, we are enabled to ascertain that they were the inhabitants, tenants, or resiants of the Township[b].

II. by the presentment of the men of the Township;

Lastly, the criminal might be arraigned upon the appeal of the injured party, who was required to swear that he was not actuated by hatred or animosity: an oath which was confirmed by seven compurgators.

III. or by the appeal of the party who was sworn to the truth of his accusation.

The culprit being thus charged with the crime, either by the voice of the country, or by the testimony of the appellant, he was put upon his deliverance; but, at this stage of the trial, if he belonged to the Sithcund class, or to the Villeinage, he was required to obtain the testimony of his Superior. The Hlaford, or his Gerefa on his behalf, came forth and swore that the man

Trial, the culprit allowed to claim the testimony of his Lord, whether he was "clear" or unsuspected of crime,

[a] Ethelred, II. § 7. See also Part II., *Proofs and Illustrations*, p. 163.

[b] Canute, II. § 9. Laws of William the Conqueror, LI. Anglo-Saxon Oaths, Wilkins, p. 64. Statutes of King William of Scotland, c. xv. Statutes of Alexander II. c. ii. "Brieve of Dittay," as given in the ancient Scottish Treatise of Crimes and Judges, tit. 9. c. 4.

Part I. Ch. VII.

had not been convicted of theft within the period of limitation, which appears to have been usually fixed from the last great Council[a], and had never paid the theft-fine. This declaration was confirmed by the oaths of two other true men, or Thanes; and the culprit had then the privilege of clearing himself, either by simple compurgation, or by the simple ordeal. If he asserted the liberty of appealing to that testimony of character which was termed compurgation, he himself swore to his innocence, and a certain number of his neighbours, whose "worth," according to the legal arithmetic of the Anglo-Saxons, was considered as equivalent to one pound, were assigned as his compurgators. If they confirmed his oath by their own, he was acquitted of the charge: but if he was unable to procure this testimony, and dared to abide the "Judgment of God," he plunged his arm into the boiling cauldron up to the wrist, or he bore the red hot iron in his naked hand for the distance of nine paces, and if, after the lapse of three days, no marks of injury appeared, he was declared innocent of the crime.

which, if favourable, entitled him to defend himself by the "Lad," or simple compurgation, or by the simple ordeal (see above, p. 10).

Such was the proceeding when the testimony of the Lord or Superior was in favour of the Accused. But, if he refused to afford the testimony which diminished the suspicions of the law, then the culprit was bound to undergo the threefold ordeal; he plunged his arm into the boiling water up to his elbow, the iron was of treble weight, and his compurgation, if he preferred that mode of trial, consisted of five compurgators, he being the sixth hand. In the laws of the Conqueror, the principle remains the same, but the details do not exactly correspond. If "good testimony," that is to say, the declaration of the Lord, was obtained, the oath of the party was alone sufficient to discharge him; but, if he had been accused before, he then waged his law, with eleven compurgators, taken from an array of fourteen "named" and lawful men. Perhaps these were Ceorls, whilst the array prescribed by Canute was to be composed of Sithcund men, who, together with the "hand" of the accused, would be equivalent in legal value. If the culprit had increased his guilt by violating the immunity of the church, or by breaking into the dwelling, the simple compurgation consisted of eleven taken from an array of fourteen, and the triple compurgation was formed by

But if the testimony of the Lord was unfavourable, the culprit was bound to undergo the threefold ordeal, or to find a triple "Lad" or compurgation.

Compurgation as directed by the laws of the Conqueror. If the culprit obtained "good testimony," his own oath was sufficient. If otherwise, by eleven compurgators, taken from an array of fourteen.

If accused of breaking into a house, or violating the immunity of the church, the simple compurgation was to consist of eleven taken from an array of fourteen; and the triple, of

[a] Thus, according to the Statute of Ethelred, I. § 1, he was to be clear since the "Gemot" at "Bromdune." The time of limitation fixed by Canute, is since the "Gemot" at Winchester; II. § 30, 1.

thirty-six compurgators taken from forty-eight, who were to be "named" or chosen as before[a].

thirty-six, taken from an array of forty-eight.

It is probable that this mode of waging law was much varied by local customs and usages, and also by the value of the property. In civil suits, the relation between oath and value is often expressed. Edgiva, the widow of Edward the Elder, thus redeemed the land which had been mortgaged by Sighelm her father, by wager of law, the *oath* being equal in worth to the money which Sighelm had paid to the mortgagee, and for which he had neglected to obtain a charter of release[b]. The Cymric scale of compurgation is fully stated[c]. And, according to the old Northumbrian law, if a dispute arose concerning boundaries, the land of each "Tributarius" or Ceorl which was claimed, required the oaths of one Priest, of two Deacons, or of three Monks, to transfer it into the domain of the party who was able to produce such testimony[d]. The intricacies of the legal computations to which we have before alluded, baffle all complete interpretation in modern language; nor can we distinctly elucidate the allusions to the mode of valuing oaths by hides[e], although it is evident that the credibility of the compurgator depended upon the nature and extent of his landed qualification; just as, according to the modern law, it is the freehold alone which renders the individual capable of serving as a Juryman in cases of High Treason.

Compurgation in civil suits regulated by the value of the property.

If property was one of the tests of legal worth, the rank of the party was also an element in this mode of trial. The King's Thane, accused of homicide, was directed to wage his law by the oaths of twelve of his Peers; an inferior Thane, by eleven of his Peers and of one King's Thane[f]. Beyond the Tweed, the thief was to acquit himself by the oath of twenty-seven men and of three Thanes[g]; whilst the oath of twelve men was required for the exculpation of the Burgess[h]. In the English Burghs, the Anglo-Saxon compurgation existed long after it

Compurgation of the King's Thane, by twelve of his equals; of an inferior Thane, by eleven of his Peers and one King's Thane.

Wager of Law allowed in cases of Felony in certain English Burghs, after it had been generally abolished by the "Assizes" of

[a] Laws of the Conqueror, XIV. XV. Harleian and Holkham MSS. Part II., *Proofs and Illustrations*, pp. 129–131, 160–166.

[b] Charta Edgifæ Reginæ, A.D. 960; Lye, App.

[c] LL. Wallicæ, p. 217. Ina, §§ 18, 23.

[d] Dialogus Ecgberti; Concilia, vol. i. p. 82.

[e] Ina, §§ 19, 52.

[f] Alfred and Guthrum, § 3.

[g] Skene, Regiam Majestatem, book iv. chap. 21.

[h] Burrow Laws, c. 28.

Part I. Ch. VII.

had been abrogated in the Guildable or Shireground by the "Assizes" of Henry Plantagenet. The Burgess of Egremont was allowed to clear himself of the accusation of theft, by the oaths of thirty-six men, and he did not forfeit this privilege until he had been thrice found guilty by his Comburgesses. The proceedings of the Hundred of Winchelsea, are, perhaps, amongst the latest in which the privilege was allowed, and there the felon, indicted by the oaths of the twelve men, claimed the right of making his defence by the thirty-six, whom he selected as the testimonies of his innocence and good fame[a].

Clarendon and Northampton, enacted by Hen. II. (See Chap. VIII.)

Wager of Law, or Trial by Compurgation, as above described, is exhibited in its last stage of conformation. Originally, the compurgators appear to have been taken from the relations of the accused party[b], a custom, which, in certain cases, was retained by the Citizens of London subsequently to the Conquest[c]. But, by degrees, the Teutonic nations altered this usage; and an array, of which the elected "consacramentales" composed one moiety[d], was an expedient employed for the purpose of rendering the trial more impartial, or, at least, less easy to the accused.

In England, when the system of Clanship was destroyed, the compurgators were to be found, at least in part, in the Freeborh of the accused party, the Tithing being, as I have before observed, a Corporation formed by the law, and which succeeded to the obligations and privileges of the ancient Lineages. This regulation, which appears in a law of Athelstane[e], affords a satisfactory comment upon the expressions so forcibly employed by Canute, that "every Freeman who wishes to be worthy of compurgation is

(See above, p. 164.)

Compurgators to be selected from the Freeborh of the accused, the privilege,

[a] Charter of Egremont granted by Ricardus de Luci; Hutchinson, Cumberland, vol. ii. p. 25. Arraignments of John Thomas, and of Agnes Archer, in the Hundred Court of Winchelsea, 13 and 19 Hen. VI. From the Lieger Book of the Town. MS. Cott. Julius B iv. See Part II., *Proofs and Illustrations*, pp. 162–165.

[b] LL. Bajuvariorum, Tit. 7, § 15. LL. Burgund. Tit. 8, § 1. LL. Wallicæ, p. 217.

[c] Custumal of London, MS. Harl. 746. See Part II., *Proofs and Illustrations*, pp. 161, 162.

[d] Pactus pro tenore pacis Dominorum Childeberti et Chlotharii Regum, A.D. 593. [Treaty for the keeping of the peace between our Lords the Kings Childebert and Clothair.]

[e] Athelstane, I. § 9. Saxon Customs, from the Holkham MS. Part II., *Proofs and Illustrations*, pp. 168, 169.

"to be brought into the Hundred and into the Tithing."[a] The privilege, therefore, of being entitled to the testimony of the neighbours, was to be acquired only by those who had fully assented to the engagement replacing the earlier bonds which had connected the Tribe. And the language of the laws of the Conqueror, directing the array of nominated compurgators, seems to be employed for the purpose of preventing the re-introduction of an array whose qualification arose from the affinity between the oaths-men and the party. That the fellow-burgesses of the accused should be vouched in the same manner as the men of the Freeborh, resulted from the virtual identity of their stations and liability; the inhabitants of the Burgh being involved in the same mutual liability as the inhabitants of the Township or Tithing; but when, as in the fifteenth century, the accused party might seek the "consacramentales" in any "visne" from whence they would be willing to appear, the original intention of the trial was lost, and it must have ceased to afford any reasonable presumption of the innocence of the party in whose favour it was adduced.

according to the laws of Canute, being denied to such as were not in the collective Frankpledge. (See above, p. 161.)

It has been shewn that the civil suit was commenced by the plaintiff's seizure of the property of the defendant, and that the legal process was only a modification, if we may so express ourselves, of the right of obtaining redress allowed by the law of nature. The amends to be obtained for the blood of the kinsman might be exacted in the same manner by main force. And pursuing these analogies, it will appear probable that the Battle Trial, in all its varieties, was originally only the result of the restrictions imposed by law, or adopted by usage, for the purpose of rendering an appeal to arms less frequent and less destructive.

(See above, p. 148.)

Trial by Battle.

In the Scandinavian codes, battle is scarcely recognized as a trial. It was traditionally believed that Frotho[1], one of those Monarchs, who, if not fabulous, are known only in fable, first decreed that all controversies, strifes, and disputes should be decided in the field[b]; and, according to a chapter in the law of Upland, which has been often quoted[c], "if any man spoke to "another those words which might not be spoken, and accused "him of cowardice," then the affront could only be washed out by blood: and the recreant, who refused to give satisfaction to his

Frotho, king of Denmark: Traditions concerning his Battle Laws.

Affronts, satisfaction to be given by the duel according to the law of Upland.

[a] Canute, II. 19. [b] Saxo Grammaticus, p. 105.

[c] Stiernhook, de Jure Sveonum, p. 76.

adversary, could never afterwards defend himself by oath or be received as compurgator. Many a combat originated in "ladies love and druery."[1] The last and most memorable duel in Iceland, was fought between "Gunnlaug with the serpent's tongue,"[2] and Rafn the Skald[a]. They contended for the hand of the fair-haired Helga, and both died in the conflict. The fate of these youthful heroes excited the greatest commiseration; and it was enacted, "in one of the greatest folkmoots ever known "in Iceland, and by the advice of the wisest men in Iceland," that thenceforth the duel should be no longer allowed. These conflicts, however, were not judicial trials in the strict sense of the expression; they were not commanded by the law, but the parties resorted to them like modern duellists, because no award of a Judge could either redeem their honour or satisfy their injured feelings. The clamour of arms was heard because the laws were silent. And although the Sagas furnish many instances of duels in which the rights of property, the debt, the dowry, or the inheritance, might be the object of contention, yet it cannot be asserted that Trial by Battle was the legal mode of deciding a civil action; and, if the litigants fought instead of pleading, it was because they found that the stroke of the sword quieted possession more effectually than the judgment of the tribunal.

Duel between Gunnlaug Ormstungu, i.e. Gunnlaug with the serpent's tongue, and Rafn the Skald, A.D. 1013: which occasions the abolition of the duel in Iceland.

Scandinavian duels, not to be considered as Judicial Battles.

Desperate warriors chose an island or "Holm"; so that neither party could flee from the spot; whence the combat acquired the name of the Holm-gang. A narrow space was assigned to the duellists: a hide, nine ells in length, was extended upon the ground on which they fought. Sometimes the lists were inclosed by hazel-stangs, or a ring was marked out by stones; and the circles where the tribunal was convened might also be used for the purposes of single combat. He who fell under the barrier, or was driven out of the ring, though his foot only passed the boundary, was considered as conquered. And this was King Frotho's law. Such regulations were intended to save the waste of human life. A conventional termination was given to the battle, which satisfied the honour of the victor, whilst the vanquished knew that he could not obliterate his disgrace by protracting a useless conflict[b].

Their regulations.

(See above, p. 113.)

Trial by Battle in civil actions or suits concerning territorial possessions,

Whilst the common possession of land continued amongst the

[a] Gunnlaug's Saga.

[b] See Part II., *Proofs and Illustrations*, p. 279, for a collection of examples relating to the ancient Battle Trials.

Teutons, an individual would have little inclination to contest the precarious possession of the field which, at the end of the year, reverted to the community: the autumnal crop was his only property. But the invasion of one Sept upon the territory of another, would be the frequent cause of hostilities, when the Tribes began to be united in nations; and if we were to theorize on the expedients by which a rude, bold and military people would endeavour to diminish the evils arising from such dissensions, none would appear more obvious than an agreement to abide the event of a single combat between their respective champions. Now, this supposition, which would be plausible as a mere hypothesis, is verified by the documents which exist. When a controversy arose between two Septs or "Genealogies" of the Alemanni, concerning the boundaries of their territories, the parties in possession perambulated the district. They then raised a turf taken from the contested land, on which they planted branches torn from the trees which grew upon the soil, and bore the symbol before the Count of the Tribe, in whose presence the assailants lifted it up, and presented it to him as their Chieftain. The Count then wrapt the token in a banner, and sealed it with his seal, and deposited the emblem in the hands of some trustworthy person, who was to keep it until the appointed "Placitum," or judicial assembly. Wager of battle was given; and when the champions met they placed the turf between them, and touched it with their swords, and declared their faith that the righteous cause would be crowned by victory[a].

to be considered as the termination of a war between two Septs or Clans, who agree to terminate their hostilities by abiding the event of a single combat between their respective champions.

The foregoing proposition proved and exemplified by the Laws of the Alemanni, in which Trial by Battle is described as the means of ending disputes between two Septs or "Genealogiæ," concerning the boundaries of their Townlands.

Whilst an allodial property and a transmissible right could be acquired in the land by cultivation and labour, he who had first reclaimed the "Assart"[1]—for this term of the English law is to be found in the Barbaric codes—and appropriated the product of the field, was its rightful lord. The title thus depended upon priority of occupation: and, when this priority was contested, the claimant did not begin his suit by words; he did not resort to pleadings before the Mallum: but he collected his forces, and vindicated his supposed property by making an entry upon the land which he alleged to be his own; and when he was thus Tenant in possession, he swore with six compurgators that he had not unlawfully intruded upon the tilth of the Disseisee, who,

Trial by Battle, allowed for Allodial Lands, in which an absolute property had been gained by appropriation, according to the Laws of the Bavarians.

The Claimant *begins* by ousting the person in possession, and then wages his law to prove that *he* had been the first occupant.

[a] LL. Allemannorum, tit. 85. De hiis qui de terrâ suâ inter se contendunt. [Laws of the Alemanni, tit. 85. Concerning those who contend about the ownership of land.]

Part I. Ch. VII.

ejected from the domain, was now compelled to become the demandant—"Nor am I to go forth," was the plea of the invader,—when he was sued by the party whom he had so lately ousted,—"since my work and labour was prior to thine." The replication of the plaintiff was to the following effect: that he had witnesses who could prove that *he* had taken the profits without disturbance; that he had first cleared, ploughed, and cultivated the ground; or that it had descended to him from his father. In such a cause no witness could be allowed to give evidence, unless he was qualified by holding allodial land within the same "March" or district; and also by being possessed of as much chattel property as was equivalent to the "were" or fine imposed upon the disseisor, if he failed in asserting his legal right to the possession which he had obtained. The oath of this witness, and which he took upon his sword (see above, p. 175), was in the following words: "I heard with my ears, and saw " with my eyes, that the tillage of this man on the land was prior " to thine, and that he took the fruits of his labour"; and this oath, if uncontradicted, was conclusive. But the replication of the tenant was no less categorical. He gave the lie to the party who had borne testimony. "Thou hast sworn falsely against us," he exclaimed: " I demand wager of battle"; and the title was decided by the event of the combat[a].

The late Occupant (who, being turned out of possession, is now the Plaintiff) replies, that *he* has witnesses to prove that *he*, or those under whom he claims, had priority of occupation.

No witnesses received unless qualified by holding allodial lands, and possessed of pecuniary property to the amount of six solidi.

Oath of the witness.

The Tenant falsifies the declarations of the witness, and demands wager of battle.

Battle Trial is not mentioned in any of the written Anglo-Saxon laws which are now extant; and the "Ornest"[b] being first expressly noticed in a statutory charter of William the Conqueror, it is usually supposed that he introduced the duel, which has therefore been considered as one of the badges of Norman servitude[c]. The law to which this effect is attributed,

"Ornest," or Trial by Combat, not mentioned in the Anglo-Saxon laws, and first noticed, in terms, in the statutory charter promulgated by William the Conqueror;

[a] LL. Bajuvariorum, tit. 16. De testibus et eorum causis, cap. 3, § 5. [Laws of the Bavarians, tit. 16. Concerning witnesses and their causes.]

[b] Ornest vel Eornest. Duellum, monomachia, certamen inter duos: sic dictum forte, quod de lite certamine dirimenda, arrhis datis vel pignore deposito (quod nostratibus hodie etiam *earnest* vocatur), mutuo se obligarunt pugiles, Lye, Dict. Sax. [*Ornest* or *Eornest*. A Duel, single combat, contest between two persons: so called perhaps, because the combatants mutually bound themselves for the settlement of the suit by fighting, by giving earnest (i.e. part payment in advance) or depositing a pledge, which even to-day is called *earnest* by our people.]

[c] 3 Blackstone, p. 337; 4, pp. 346–418. Mr. Hallam and Mr. Reeves follow the same opinion.

begins by declaring, that an Englishman should have full liberty to appeal or challenge a Frenchman for theft, manslaughter, or any other matter which, as between man and man, ought to be decided by battle or ordeal. If an English plaintiff forsook the battle, the Frenchman was not driven to the ordeal, but he might clear himself by "oath and witnesses," according to the Law of Normandy. An Englishman appealed by a Frenchman, might, if he chose, abide an inquest of "witnesses"; and if he declined this trial, he had full leave to choose between combat and the burning iron. But in all matters which might lead to "outlawry,"[a] it was enacted by the King, that if the Englishman was the accuser, and wished to prove his charge against his adversary, then the Frenchman was to defend himself with "Ornest"; or if the Englishman declined this trial, then by "Oath." Of such a combat, as between Norman and Norman, an important instance is afforded in the reign of William Rufus. The King having assembled his "Witan" at Salisbury, Geoffrey Baynard appealed William, Count of Eu, charging him with treason. The defendant was vanquished in the "Ornest." He was blinded and mutilated by the orders of the exasperated sovereign, whilst his steward, who, being implicated in the conspiracy, was considered as convicted by the defeat of the principal offender, "was hanged on the gibbet" by the King's command[b]. But is it certain that these laws are such as to warrant the conclusion that the Battle Trial was introduced by the Conqueror? They appear to refer rather to the "Ornest" as an Anglo-Saxon custom, which was now put under new regulations. It is not designated as a Norman law, like the law of inquest or "witnesses," but it is mentioned or noticed as a custom known to the people under an Anglo-Saxon name, and apparently recognized by the existing jurisprudence. And though the silence of the Anglo-Saxon statutes is not to be put out of view, still, as I have before observed, the nature of these documents is such, as always to render it necessary to pause before we consider ourselves as concluded by the negative evidence deduced from the absence of information; when the point sought to be disproved, is analogous to their general complexion and character. Another ground of hesitation arises from the

which declares, that if an Englishman appeals a Frenchman of felony, &c., the Frenchman may defend himself by "Ornest," or Battle, or by an inquest of "witnesses" (or jury), the latter according to the Law of Normandy. (See Chap. VIII.)

An Englishman appealed by a Frenchman, might take his trial by witnesses, by "Ornest" or by the ordeal.

In appeals of outlawry, the Frenchman might wage Battle, and if the Englishman declined Battle then he might clear himself by "Oath."

Appeal of Treason between Geoffrey Baynard and William, Count of Eu, in 1096, decided by battle.

Probability of the existence of "Ornest," or Trial by Battle, before the Conquest: the laws of the Conqueror seeming to refer to it as an established custom;

[a] æt eallan utlaga þingan—an obscure expression. The Anglo-Saxon outlawry appears to have been a substantive judgment, and not merely the disability incurred by absconding from justice.

[b] Sax. Chron., A.D. 1096.

Part I. Ch. VII.

circumstance, that the laws of the Conqueror only relate to criminal charges, and that they are silent with respect to the Combat in civil causes, and that, therefore, they do not account for the Battle, by which the "real action" was decided. Upon this difficulty, it has been remarked, that "when William had ordained that this "martial practice of his own country should be observed here in "criminal trials, it became very easy to introduce it in civil ones"; and, being only used "in the Curia Regis, it had not, among other "novelties of that Court, as it certainly would have had in the "County Court, or any other of the tribunals of Saxon origin, "the appearance of a singular innovation."[a] In reply to these observations, it must be admitted, that an Anglo-Saxon duel cannot be adduced; but the argument which rests upon the absence of Trial by Battle in the Courts of Anglo-Saxon origin, is not entirely correct. Immediately after the Conquest, the "Witnesses" of the Church of Worcester offered to become the champions of St. Mary, and to defend the rights of Bishop Wulstan by Combat, against the claims of the Abbot of Evesham[b]. It was in regular course, according to the common law, to join battle in the County Court, when the cause was not removed into a superior tribunal. If we reject the subtleties, the distinctions, and, above all, the technical expressions which unquestionably were due to the Anglo-Norman lawyers, and invented or perfected under the Anglo-Norman Sovereigns, the principles which govern the proceedings of Judicial Battle are so nearly identified with those which are to be collected from the Teutonic codes, as to afford a probability that they were parts of the Anglo-Saxon law, preserved by the usage and traditions of the people.

nor do they direct the Trial by Battle in civil causes.

Wager of Battle offered by the "Witnesses" of Wulstan, Bishop of Worcester, against Walter, Abbot of Evesham, circa 1077.

Battle joined in the Anglo-Saxon County Courts.

Paradoxical as the position may appear, there is reason to suppose, that, according to the English common law, a forcible entry was the most lawful mode of asserting the title to territorial possessions, and that in the same manner as the personal action was originally commenced by seizing the goods of the defendant, so the claim to the domain was properly enforced by an invasion of the territory. It happens that the details of a real action in the King's Court cannot be given earlier than the reign of Henry II., when a new series or system of legal remedies had been created, by which the pristine resort to arms was much restrained. Yet, even in the thirteenth century, if we allow for the innovations

According to the English Common Law, a forcible entry seems to have been originally the first step taken by a claimant to recover his lands.

Forms of Process invented by Henry II.; such as the *Grand Assize*, *Assize of Novel Disseisin*, &c. (see Chap. VIII.)

[a] Reeves, English Law, vol. i. p. 82.

[b] Hemingi Cartularium, p. 82.

resulting from the vigilant jurisprudence of Henry, the indications are sufficiently manifest of the spirit of an earlier age. Thus, the most ordinary case of claiming possession, was that which originated upon an intrusion. When the father died, a stranger[a] would enter into the vacant land during the infancy or absence of the heir, to whom the right of possession had descended. In this case, it was entirely lawful for the heir, if he could, to eject the intruder by main force, and thus to recover the enjoyment of his inheritance. Indeed, this was the first remedy enjoined by the law[b]. He was exhorted not to yield to that cowardice or supineness by which his warlike privilege might be lost. If the representative of the deceased land lord neglected either to eject the intruder by force, or to have recourse to the remedy given by the "Assize," then lately enacted in his favour, such a right accrued to the occupant, as was transmissible to *his* heir, who then became the lawful Tenant of the freehold, until his title was defeated or disproved in its turn. It may be now assumed, that the individual out of possession, unwilling to await the formalities of the law, made such an attack as would have been strictly lawful if it had been commenced when the invasion or disseisin was yet recent and notorious. The occupant, in that case, was fully justified in opposing force to force. He forthwith assembled his friends and his retainers; the private war was renewed; and, though the parties are advised, if possible, to abstain from bloodshed, still it does not appear, that, even at a more recent period, the homicide committed under similar circumstances was the subject of judicial inquiry. Supposing the owner *de jure* thus baffled by him who was the owner *de facto*, what was his remedy? He was compelled to bring his Writ of Right, a process by which he claimed not the possession, but the property of the land; and when, after many proceedings which are not relevant to our present inquiry, the parties appeared in court, the demandant set forth his claim[c]. He "counted" or alleged, that his ancestor was seized in demesne of the disputed property, from

Intrusion,—a Disseisin committed by a Stranger entering upon the vacant possession immediately upon the death of the Ancestor, and when the Heir was an infant or absent.

A freehold acquired by the Heir of the Disseisor, if the latter was allowed to continue in possession of the property until the time of his death.

And therefore if the Heir or Owner *de jure* attempted to regain possession by force, the Heir or Owner *de facto* might resist him by force.

Writ of Right brought by the Heir or Owner *de jure*.

[a] Bracton, lib. iv., de Assisa Novæ Disseisinæ, c. 2. [Bracton, concerning the Assize of Novel Disseisin.]

[b] Bracton, lib. iv. c. 5, de primo remedio post disseisinam et ubi incontinenti licet rejicere, et quomodo et quando. [Bracton, concerning the first remedy after disseisin and where it may be rejected forthwith, and how and when.]

[c] Glanville, lib. ii. c. 3.

whence he took the profits, or "esplees,"[1] in corn, in hay, and other produce; and this, he continued, "I am ready to prove by my freeman,"—naming the witness,—"who saw it and heard it." Or the demandant, in place of the eye and ear witness, might produce one by whom the testimony had been received from his parent; who, on "his death-bed, enjoined the "champion by that faith which a son owes to his father, that "if he ever heard a claim concerning the land, he should prove "the fact of seisin, as that which his father had seen and heard." The tenant, if he determined to defend his possession by combat, then falsified or contradicted this testimony. He denied it, word for word; and the witness, now the champion, was required to meet his opponent in the field, and the event of the conflict constituted the final decision of the controversy[a].

Wager of Battle, Oath of the Witness who swore that he had seen the Ancestor of the Demandant (i.e. the Owner *de jure*) in possession of the disputed lands, or that his Father, who had seen the Ancestor in possession, had enjoined him to prove the facts.

It is scarcely necessary to remind the reader, that such a trial, as described by Glanville[2] and Bracton, follows, step by step, the course of the ancient Teutonic codes, and that it differs from them only in consequence of certain restraints and limitations imposed upon the exercise of absolute force in acquiring possession, constituting a species of Law of Nations within the state. Every man was at liberty to commence a private war for the recovery of the lands which he considered to be his own. It is true that he acted at his own risk, and was liable to a pecuniary amerciament, though of no great amount, if his warfare was commenced upon illegal grounds. But, if he had a claim, the event, when crowned by success, justified the means. In proportion as the supreme Tribunals became more effective, this right was diminished. The mootings of the Serjeants in the Hall became more frequent than the encounter of the doughty champions in the lists; and the declaration and the plea became more manageable weapons of attack and defence than the baton and the target. Still the ruling idea of the law was, that legal proceedings only came in aid of the exertions made by the individual to obtain

(See above, pp. 181, 182.)

In questions of disputed title, though the law came in aid of the parties, yet they were nevertheless forced to do their best to gain or maintain possession by force. "Nunc autem dicendum qualiter recurritur ad Superioris auxilium, cum utramque amiserit possessionem, naturalem videlicet et civilem."[3] "Cum igitur disseisitus ita negligens fuerit in hac parte, quod *nolit vel non possit disseisitorem suum rejicere*, de beneficio Principis succurritur ei per recognitionem

[a] See Glanville, lib. ii. c. 3; Bracton, lib. iv., de Assisa Novæ Disseisinæ, cap. 6. Quod oportet de necessitate ad Superiorem recurrere ubi non poterit disseisitus per se disseisitorem suum incontinente rejicere [Bracton, book iv., concerning the Assize of Novel Disseisin, chapter 6. That one must of necessity have recourse to the Superior where the person who has suffered disseisin cannot forthwith by himself eject his disseisor], and the Records in Part II., *Proofs and Illustrations*, see pp. 25 and 213 ff.

actual and corporeal possession of his property; that the Writ was an expedient devised by the sovereign for the purpose of assisting the demandant, when, by his negligence, he had lost both his natural and civil title to the lands; that he was to use force to the utmost extent which the law would allow, and, having done so, he was then qualified and entitled to invoke the law. His rights, supposing him too weak to enforce them, could only be preserved by his annual entry upon the lands to which he was entitled. "Doubt or fear" would certainly excuse this actual invasion, and allow him to make his "continual claim" by word and not by deed, approaching as near as he might, to the confines of his inheritance. But what degree of doubt or fear? It was not sufficient for him to apprehend that, by thus provoking an enemy, his house would be burned and his goods spoiled—this was not danger which excused him. An impending danger to the person was alone allowed as a sufficient reason for abstaining from the repeated acts of enmity and provocation, dictated, directed and encouraged by the law. But even here the Judge declared, that "the fear must not be a vain fear, but "such as may befal a constant man"; and imminent and evident peril of mayhem and of death was the only cause which was accepted as a reason for the absence of actual and visible hostility[a].

"Assisæ novæ disseisinæ, multis vigiliis excogitatam et inventam," Bracton.

Entry to be made upon the land, or the right to be kept up by continual claim.

It may be contended, that all these doctrines were brought in by the followers of the Conqueror, amongst whom they prevailed in Normandy; but when we consider the full evidence of their existence amongst the Teutonic nations, the ancestors or brethren of the Anglo-Saxons, and their accordance with those portions of the Anglo-Saxon law preserved in their statutes, we may at least consider the Battle Trial, both in England and on the Continent, as one of the modes by which a termination was given to a vexatious and predatory warfare. The challenge to the credibility of the witness was taken up as a private affront, and the quarrel of the Tribes was transferred to the representatives of the contending parties.

The Battle was not infrequently called the "Judgment of God," and represented as an appeal to Unerring Wisdom. This language was always rash, and often wicked; but, however modified by the religious opinions which prevailed during the Middle Ages, these practices were originally grounded upon the principles of human policy and jurisprudence. They became

Battle Trial, not entirely absurd in its origin, though afterwards becoming so, by the change of circumstances in society.

[a] Co. Litt., l. iii. c. 7; and the ancient authorities therein quoted.

extremely faulty when the causes which first introduced them ceased to operate; but, in their origin, they were founded upon such sufficient premises as rendered them tolerable and acceptable. Man never begins by introducing any law which is entirely unreasonable; but he very frequently allows a law to degenerate into folly, by obstinately retaining it after it has outlived its use and application. An issue joined upon a Writ of Right, in the reign of Elizabeth[a], in which the validity of a purchase is to be determined by two Masters of defence, wielding their staves before the venerable Justices of the Common Pleas, dragged from their tapestried recesses and compelled to seat themselves upon their Bench, removed to Tothill Fields, to their great annoyance and disquietude, may be viewed as the very acme of solemn absurdity. But if we carry back our imagination to the age when the Isle of Harty, in which the lands were situate, was ruled by one petty savage Chieftain, and Thorney Island, where the court was held, by another, we shall be convinced that it was an advance in civilization to substitute one conclusive trial of strength between the champions, in the place of the mutual depredations of the belligerent powers: for it must never be forgotten, that all real property was originally in the nature of a sovereignty; and that the first Battle Trials were not for a field or an acre, but for an entire Lordship or Domain.

Does it become necessary to complete our apology for Trial by Combat, by appealing to the still-continuing existence of the duel amongst us, proscribed by the laws of the Realm, but enforced by the code of honour? It was long since remarked, that if the law affords no redress for contumely, "men will have recourse to "the law of nature, and do themselves right by the sword."[b] And the argument thus addressed to the Tribunal is the best recognition of the protection which ought to be afforded by the law, though the proceedings of the English Courts are only declarations of its inefficiency. Our common law began by refusing to entertain any action for mere words, unless the slander, if true, was such as would endanger the life of the object of it. This safeguard was enlarged scantily and slowly, until it attained its present

[a] Chevin and Paramour's Case, Trin. 17 Eliz., Dyer, 301.

[b] Argument in the Case of the Jurisdiction of the Earl Marshal; Chambers *v.* Jennings, Hil. 1 Annæ in B. R. 7 Mod. Rep., p. 126. 3 Blackstone, p. 123. Com. Dig. Tit., Action upon the case for defamation: § What words are not actionable.

extent, enabling the individual to recover a pecuniary satisfaction for such defamation as may impair his trade, or exclude him from society, but compelling the courts to disclaim any knowledge of the sentiments and feelings which pervade our present state of society. The most opprobrious assertions against the character of a gentleman, the most galling affronts, the most scurrilous language, will not command one farthing damages. We cannot, therefore, contradict the writer who, rejoicing in the discovery of the defect, maintains, that, on these points, our English jurisprudence is eminently faulty[a], and that it has not advanced with the spirit of the age. If the "sum of guilt" produced by the practice of duelling be rightly estimated by one[b] who has had full opportunity of calculating its effects upon and amongst the higher classes of society, it is surely imperative upon the Legislature to remove the provocations occasioned to the individual by the inefficiency of the law. Nothing more is required than to declare, that the Common Law shall conform to the rules of Common Sense. The legal intendment should run equally with the common understanding of the world. Let the feelings of the individual be understood and estimated by Judge and Jury, as they are in the ordinary intercourse of life; and a challenge arising from the inconsiderate intemperance of the tongue, will then be deemed as absurd as it would now appear, if the question, whether an entail be duly barred, were to be decided by the champions in the field.

Modern duels occasioned by the narrowness of the common law, which refuses to take any cognizance of affronts, such as calling a Gentleman a scoundrel, a rogue, a villain, or a cheat, giving him the lie, &c.

Trial by Battle originally resulted from the absence of competent jurisdiction. Trial by Compurgation and the Ordeal were expedients intended to mitigate the rigour of the law, and to compensate for the uncertainty or absence of human testimony. Witnesses must often have been entirely wanting; for it was not every one who could testify in all cases; the right of giving evidence was annexed to station and wealth; and there were occasions when an individual, not possessing a certain qualification of rank and property, was as incompetent to give testimony as a slave in the West Indies, whose evidence must be rejected by the court, though he may be the only person capable of convicting a culprit guilty of the foulest crime, or proving the innocence of the prisoner. Furthermore, the Barbaric nations rejected all circumstantial evidence. A direct assertion of the fact was

Compurgation and Ordeal: Principles upon which they were introduced.

[a] See Jeremy Bentham, Traités de Législation, vol. ii. p. 233.

[b] Wilberforce, Practical View, chap. 4, § 3.

Part I. Ch. VII.

required from the witness; he was to speak from the positive information of his senses; and a short interval of time was considered so far to weaken this positive testimony, as to reduce it to a secondary probation.

It is not necessary to maintain that these principles, as rules of evidence, are wise in the abstract: they must be considered with reference to the general state of knowledge. Even now, with all the advantages derived from an improved system of jurisprudence, and with all the aids imparted by civilization, the condemnation of the criminal whose guilt is to be inferred from presumptions, is often a perplexing task, always a painful duty. Illiterate Judges, unaccustomed to investigation, and whose minds were unimproved by thought and reflection, might therefore feel, that if they refused to undertake the labour of unravelling a mass of perplexed statements and contradictory testimony, they avoided the hazard of injustice. Popular tribunals are always prone to convert suspicions into proofs; and we may doubt whether these Tribunals, taken from the people, were altogether to be censured for this distrust of their own wisdom.

An Appellant to be considered as a witness in his own cause.

When an accusation was preferred by an appellant, he may be considered as a witness in his own cause; he was, therefore, to be received with a certain degree of distrust. The inculpation by the presentment of the hundred, was a charge preferred against an individual upon the suspicion which prevailed in the community. He was believed to be guilty by all the country, but still the law would not venture to condemn him, until the bad opinion entertained of him in this particular instance, and by which he was accused of a definite act of guilt, had been weighed against the general character of his life and conversation. He was, therefore, allowed, as a preliminary defence, to call upon the voucher of his Lord, a wealthy and responsible member of the community, who was his legal protector. And if the superior deposed upon oath that the accused was a man of unspotted fame, and also fortified this declaration by the collateral oaths of his own compeers, then the testimonial began to counterbalance the statement of the appellant, or the floating opinion of the people. The defendant now stands in court as one who is above mere suspicion; and if a certain number of his relations or neighbours will swear to their belief of his innocence, their solemn asseveration is considered as sufficient to clear him from a charge which, in the beginning, was destitute of positive proof. When the superior will not dare to testify to the good character

Presentment of the Hundred or Township, a charge grounded upon general suspicion.

of the accused, then, as a necessary consequence, the latter is bound to produce a greater number of compurgators to compensate for the greater degree of suspicion under which he labours. The whole theory of Trial by Compurgation, in criminal cases, therefore, resolves itself into the ordinary practice of our modern Courts of Justice. Evidence has been given, by which a presumption is raised against the accused, but, not being conclusive, it is rebutted by the proofs of general good character.

Compurgation, equivalent to evidence of character, given in a case where the evidence of the fact is so far doubtful, as to admit of being rebutted by the inferences arising from the good repute of the person accused.

There is more difficulty in ascribing any degree of fitness to the Ordeal Trial. But the situation of the culprit must be recollected: the accuser, however interested, swore positively to the truth of the charge; the Presentment of the Hundred differed from a condemnation, only by the slightest shade; and the culprit was not driven to the Ordeal until he had failed to produce any legal presumption of innocence by which the presumption of his guilt could be neutralized. He could find no warranty for his reputation: no one, whose oath was admissible according to the rules of procedure, would conscientiously declare that the prisoner was innocent of the crime. Thus circumstanced, the Ordeal was a boon to the offender; it gave him one chance more of escaping from punishment and vengeance. Perhaps there is no nation where the Ordeal cannot be traced. It is common to the old world and to the new; to the Negro and the Esquimaux. A custom so universal, and, at the same time, so repugnant to our usual feelings, must have had some reason which extenuated its rashness; and, in every case, it appears to have been employed under the same circumstances. Suspicions of guilt are entertained, so forcible and strong as not to be easily resisted by the understanding; and yet wanting in that degree of certainty which puts the Judge at ease when he proceeds to the condemnation of the offender.

Ordeal; the offender not driven to this mode of trial until he had failed to adduce any satisfactory evidence in his favour.

The real intent and spirit of the Ordeal will be best understood by comparing it to judicial torture, which holds exactly the same situation in the theory of evidence, as received by the Civil Law. By following the reasoning of the Civil Law, the application of torture, before sentence, and for the purpose of obtaining confession, may be plausibly represented as an act of mercy; and, indeed, when we consider how generally the "Question" has prevailed, we are compelled to assume that it could not have been allowed to subsist amongst the most polished nations of Europe without some pretence of natural equity. In the first place, the Civilian[1] always requires proof

Part I. Ch. VII.

by two witnesses at the least; the deposition of one is of no avail whatever. *Unius responsio testis omnino non audiatur*[a] [the evidence of one witness is not to be admitted at all], is the universal maxim of the Civil Law; and though the English lawyer[b], always prone to flatter our Pharisaical English pride by depreciating the institutions of the rest of mankind, may raise loud objections against the absurdity of this restriction of credibility, yet, even if, according to his usual course, he refuses to recollect the precepts of the Divine Law[c], he must admit that a very philosophical authority defends the rule and the principle which it involves—"For the assertion of the one witness who "affirms is only equal to the assertion of the criminal who denies, "a third is needed to decide between them."[d] However full and precise, therefore, the evidence of one witness may be, the Civil Law considers his testimony as affording only a vehement presumption, and not as a proof. Furthermore, be the witnesses ever so numerous, still, unless the multiplied testimony be direct and positive, affording proofs "as clear as the light of the sun," their evidence is an incomplete probation; for the Civil Lawyer does not consider himself as convinced by the metaphysical proof resulting from circumstantial evidence, or from the comparison or union of facts, which, simply and singly considered, are not proofs of guilt: but which, when linked and conjoined, are held, according to the English Law, to produce a supposition in the minds of the Jurymen, that the deed has been perpetrated by the culprit, though it was never seen by mortal eye. In either of these cases, then, the Civil Law pauses; but the Law of England hastens to condemn[e]. Amongst us, it is fully settled, that the positive evidence of a single witness, whose credit is untouched, though the testimony be entirely unsupported by any collateral circumstances, is sufficient to warrant a conviction, even for a capital crime; and the condemnation of the criminal, upon the hypothesis suggested by presumptions, all positive testimony being entirely absent, is an event of daily and familiar occurrence. If the murder, for instance, is inferred by the chain of moral evidence, coming within the boundary which has been assumed as legal, the offender undergoes his doom. But the Civilian, as

Torture, employed by the Civilians in cases where the evidence, according to the English Law, would warrant a capital conviction.

[a] Cod. 4—20—9.
[b] 3 Blackstone, p. 371.
[c] Deut. xvii. 6; 2 Corinthians xiii. 1; Timothy, v. 19.
[d] Montesquieu, liv. xii. c. 1.
[e] Starkie on Evidence, Part III. §§ 58, 64–68.

above observed, refuses to condemn upon that probation which he defines as imperfect, and only raising a violent presumption of guilt; and if a Pothier[1] could visit an English Assize-Hall, he would exclaim against the cruelty and injustice of the common lawyer who sends forth the wretch to the place of execution, pronouncing his judgment upon the fallible, or, perhaps, corrupt or vindictive evidence of one single individual: or upon the artificial and fine-drawn fabric of legal faith, not established upon the facts which, as far as human testimony may be trusted, are established by witnesses, but upon circumstances, inferences and surmises. To complete the full and indubitable proof, the Civilian, in such a case, requires the confession of the criminal himself. He is solemnly warned and required to speak the truth; if, after time given for reflection, he refuses to acknowledge the crime of which he is accused by vehement presumptions, he is then stretched upon the rack; and should his innocence or his fortitude enable him to persist in his denial, he is absolved from the capital charge, and his life is saved. Loudly, therefore, as we praise the superior excellence of our institutions, the difference between the Civil and English Law is reduced to the single point, that where the English Law inflicts the punishment of death, the Civil Law grants a respite, and directs the torture, leaving to the criminal a possibility of escaping the capital conviction.

The proceedings of the Civil Law, when fairly conducted—for the application of torture after conviction, or for the purpose of obtaining evidence against other parties, rests upon a very different ground—result from the scruples of a timorous conscience, earnest to administer justice, and yet fearing to incur the responsibility of passing the decree of death, upon fallible testimony; and the theory of the Civil Law is really milder and more humane than the theory of the English Law. But the fallacies which led to the extreme practical cruelty of the Civil Law are easily detected. If the Civilian was uncertain whether his extraneous evidence warranted the sentence of death, he should not have inflicted those sufferings which are more terrible than death. If he saw any reason to distrust the witness, or if he supposed that the truth was so concealed that it could only be wrung and extorted from the agony of the criminal, he should have refrained from capital punishment altogether. Human legislation can only act upon human testimony. Vengeance does not belong to man; and, if evidence cannot be obtained which satisfies the conscience of the tribunal, the love of justice must

not degenerate into bloodthirstiness, so as to seek, at all events, the condemnation of the offender.

The rules of evidence adopted in this country are framed with great acuteness and caution; and, generally speaking, are admirably calculated for the furtherance of justice in the ordinary affairs and dealings of society. The debt cannot be recovered, unless the liability of the defendant be shewn in the most irrefragable manner; and property is fully protected by the precautions which guard the inheritance against fraud and conspiracy. But whether any mortal judge can be warranted in consigning a fellow creature to death, upon any testimony less conclusive than the direct and positive establishment of the accusation by the mouth of two or three witnesses, may be reasonably doubted, and the doubt is confirmed by the volumes of the English Law. Whatever may be urged by the political reasoner, it is difficult to find any valid reason why the law insists upon two witnesses to prove the guilt of high treason, and is contented with one, if the indictment relate to a capital felony. If a government be so wicked as to attempt to murder its enemies by false witnesses; and if men can be found who will become the instruments of such villainy, there will, in such a state of society, be no deficiency of perjury to help the hatred or malice of any individual; and the special rule imposed by the Statutes of High Treason is a distinct admission that the general law is imperfect, if not unjust. Indictments, however, grounded upon the oath of one witness, are not so frequent as those which are sustained by circumstantial evidence. The force and tendency of the presumptions industriously collected by the prosecutor, and logically arranged by the ingenious advocate, may oftentimes produce a belief of the charge: and, as the law is now administered, the Judge is compelled to pronounce the fatal, irreversible, irremissible doom, unless the criminal can assert his innocence by negative proof; a proof, of all others, the most laborious to procure, the most difficult to establish, the most liable to cavil and exception. Should the statesmen who support the existing practice urge, that the commission of crime would be encouraged by a Code which refused to inflict capital punishment upon circumstantial evidence, it is at least incumbent upon them to revise the laws which diminish the reasonable safeguards due to the prisoner, and impede him in his defence; and, above all, they should exert themselves to render the whole system more conformable to those principles, which alone can afford any real support or guidance to the institutions devised by human wisdom.

CHAPTER VIII.

Anglo-Saxon laws not greatly changed until the Accession of Henry II.—Contradictory portraits of this Monarch—Trial by Inquest or Jury—Jurymen originally the Witnesses of the fact—Description of the ancient Juries in England and in Normandy—Difference between Jurymen and Compurgators—Occasional adoption of sworn Witnesses by the Anglo-Saxons—Progress of this mode of Trial after the Conquest—Its extension by Henry II.—Assizes of Clarendon and of Northampton—Presentments made by the Jurors of the Hundreds and Townships—Abolition of the Compurgatory Oath by Henry II.—Ordeal, how practised under Richard I. and John—Abolition of the Ordeal under Henry III.—Introduction of the Second Trial by the Visne, now called the Petty Jury, in the place of the Ordeal, but rather by use and custom than by positive law—Peine forte et dure—Further application of the principles of Inquest or Jury Trial—Domesday—Its formation by the Sworn Inquests—Juries required to ascertain the rights of the Crown—Aids and Taxes assessed by Sworn Inquests—Political consequences of the general adoption of Juries.

Anglo-Saxon laws subsisting without material change from the Conquest to the reign of Henry II. (See above, pp. 43, 82, and II., p. 235.)

NOTWITHSTANDING the violence and desolation attendant upon the Conquest, William the Norman governed with as much equity and justice as was compatible with the forcible assumption of the Regal power; and the main fabric of the Anglo-Saxon jurisprudence remained unchanged, although some alterations had been effected in the executive details. If William ever contemplated the introduction of his Norman jurisprudence, as the law of the whole people of England, that plan had been defeated, and, probably, by the opposition of the Normans themselves, united to the unwillingness of the natives. Had the Conqueror succeeded, the Royal prerogatives would have gained a great accession; for it was the English laws which protected the Norman Barons,

Part I. Ch. VIII.

whose franchises were established by pleading the usages which had prevailed under Edward the Confessor. So great, indeed, was the traditionary veneration inspired by the hallowed name of the last legitimate Anglo-Saxon King, that the Normans themselves were willing to claim him as the author of the "wise customs" of their native country[a]. And we may be also inclined to believe, that, notwithstanding the very strong terms in which the Chroniclers describe the despotism of the Conqueror—"All "things," it is said, "divine and human, obeyed his beck and nod"[b] —his supremacy over the Church was the principal oppression of which they complained. But the employment of foreign functionaries was followed by new forms of proceeding, not accompanied, perhaps, by any decided intention of innovating, and dictated merely by the pressure of circumstances, which, nevertheless, had afterwards the effect of displacing much of the old jurisprudence, or of causing it to assume another guise. During the tyrannical reign of Rufus, the arbitrary will of the Monarch constituted the only code by which the subject was ruled; but the Charter of Henry I. "restored the law of Edward"; or, in other words, re-established, or intended to re-establish, the Anglo-Saxon jurisprudence as it existed before the invasion. To what extent the alterations, consequent upon the change of property amongst the higher orders, had modified the older institutions, we cannot entirely ascertain; and some of the doctrines introduced by the Conqueror were silently preparing the way for future revolutions. But, in theory, the customs of the ancient national Monarchs still prevailed; and the administration of the law, though severe, was neither discreditable to the Government, nor ungrateful to a people, then advancing in good order and civilization. This progress was suddenly interrupted by violence and anarchy. Under the turbulent and miserable usurpation of Stephen, neither government nor law existed in England. The realm was entirely given up to violence: every powerful man built his castle, which became a den of robbers; the towns and the open country, the clergy and the peasantry, all suffered equally from spoil and rapine: pestilence and famine swept away the people, and the labours of agriculture were abandoned in despair: to till the ground was to plough the sea; the earth bare no corn, for the land was all wasted by these deeds. "Such things," continues

Anarchy and misery of the reign of Stephen.

[a] See Rouille's Commentary upon the Grand Coustumier, Pref.

[b] Eadmer, p. 6.

the Monk of Peterborough, "did we suffer for nineteen years "for our sins,"[a] until the accession of "Henry Fitz-Empress," considered by the English as representing the ancient national dynasty. They traced his descent to Alfred and to Cerdic[b]; but the son of Geoffrey Plantagenet was a stranger by birth and education; and the Anglo-Saxon jurisprudence was finally subverted by the restorer of the Anglo-Saxon line.

Henry II. founder of a system, which was afterwards matured into the "Common Law."

If we seek the character of the founder of the Common Law, in the pages of the Justiciar, we shall view him as greater and more powerful than any King who had hitherto borne sway in England. Just, discreet and merciful; a lover of peace, but whose humanity did not degenerate into indolence or supineness; mighty, but who never allowed his strength to tempt him into tyranny. By the force of his right hand he crushed the violence of the proud and intractable, whilst he extended his sceptre to the indigent and lowly. None of the Judges of his Court could dare to deviate, however slightly, from the path of righteousness, nor to utter a sentence contrary to the dictates of truth. In his supreme tribunal, the power of the adversary oppressed not the poor man; neither could favour or credit drive the lowly from the seat of judgment. Such are the sentences which preface the earliest Treatise on the Law[c]. But in the portrait which we receive from the Ecclesiastic, every virtue disappears. Unchaste, greedy, avaricious, capricious and cruel, he abolished all the old and rightful laws of the country by the new ordinances, termed "Assizes," which he promulgated every year. Severe beyond example, his jurisprudence was subversive both of natural justice and of the laudable customs of the realm. Attacking, with an even hand, the honour, the privileges and the property of the Aristocracy, and the franchises of the Clergy; no individual was so exalted as to be above the reach of his arbitrary power; no one so insignificant as to be sheltered by obscurity from his searching tyranny[d]. This strange discrepancy between the Minister and the Monk, may be attributed, in part, to the difference of their respective stations. The persecutor of Becket could find little favour from the Churchman; and the charge preferred against him, that he "kept the guilty Priest

Contradictory portraits of Henry II. Represented by Glanville, the Justiciar, as a just and merciful King;

and by Radulphus Niger as the worst of tyrants.

[a] Sax. Chron., A.D. 1137.

[b] Radulphus de Diceto, Imagines Historiarum, p. 529.

[c] Glanville, de Legibus, in Pref.

[d] Radulphus Niger[1]. MS. Cott. Cleopatra C x.

Part I. Ch. VIII.

"in fetters, making no distinction between the Clerk and the "Churl," may not be considered as a proof of the impartiality of the complainant; but the fiscal extortions of Henry, together with the abuses resulting from the sale of right and justice, have been faithfully recorded. In opposition to the praises of his equity, so loudly bestowed by Glanville, we can quote the declaration of the suitor, who counts the bribes which he paid to the Monarch; and the testimony afforded by the Justiciar is rendered suspicious by his known perversion of the law to answer his own sinister designs[a].

(See above, p. 184, and below, p. 213.)

Henry was, however, a wise and intelligent legislator. The "Assizes," whose necessary severity ensured the tranquillity of the country, exist either in a satisfactory abstract, or in their original form. And, though the milder statutes which altered or regulated the mode of trial in civil actions have been lost, sufficient notices of their purport are to be collected from the incidental notices preserved by the first systematic writers on the English Law. The acts of the Counsellor are frequently ascribed to the Sovereign; but the encomiast and the detractor both agree in ascribing the "Assizes" enacted by Henry to the bent of his own mind. Nor was he deficient in that cultivation which is most essential to a lawgiver. More than usually versed in historical literature[b], the hereditary office of Grand Seneschal of France, which he held, acquainted him with the details of judicial policy. The peculiar characteristic of his legislation is the sagacious application, or rather amplification of rude and imperfect institutions, which he encouraged and fostered into greater efficacy and power; and, although he was not, in strictness, the inventor of that legal constitution which succeeded to the Anglo-Saxon policy, yet, "Trial by the Country" owes its stability, if not its origin, to his jurisprudence. That administration of justice which is said to bring the law home to every man's door was permanently established in his reign; and, perhaps, even the Remedial Court of Parliament itself is a remote consequence of the jurisprudence of the Anglo-Norman King. Yet all these institutions were strangely modified by time and chance. They were gradually shaped out by the collision of events, and by small and partial alterations, the silent

Institutions firmly established, if not introduced by the Laws of Henry II.: Trial by Jury, Judicial Circuits &c.

[a] Richard de Anesty's Narrative; Part II., *Proofs and Illustrations*, p. 9. Benedictus Abbas, 408, 500.

[b] Giraldus Cambrensis, Hibernia Expugnata, p. 784.

precursors of mighty changes, unexpected, unforeseen and undesigned.

Trial by Jury[1], according to the old English law, was a proceeding essentially different from the modern tribunal, still bearing the ancient name, by which it has been replaced; and, whatever merits belonged to the original mode of judicial investigation—and they were great and unquestionable, though accompanied by many imperfections—such benefits are not to be exactly identified with the advantages now resulting from the great bulwark of English liberty. Jurymen, in the present day, are triers of the issue: they are individuals who found their opinion upon the evidence, whether oral or written, adduced before them; and the verdict delivered by them is their declaration of the judgment which they have formed. But the ancient jurymen were not empanelled to examine into the credibility of the evidence: the question was not discussed and argued before them: they, the jurymen, were the witnesses themselves; and the verdict was substantially the examination of these witnesses, who, of their own knowledge, and without the aid of other testimony, afforded their evidence respecting the facts in question, to the best of their belief. In its primitive form, a trial by Jury was, therefore, only a trial by witnesses; and jurymen were distinguished from any other witnesses only by the customs, which imposed upon them the obligation of an oath, and regulated their number, and which prescribed their rank, and defined the territorial qualifications from whence they obtained their degree and influence in society.

Trial by Jury, according to the old English law, essentially different from the modern Jury; the ancient Jurymen being the Witnesses of the fact, and not the judges or triers of the truth of the evidence given by other Witnesses before them.

I find it necessary to introduce this description of the ancient "Trial by Jury"; because, unless the real functions of the original jurymen be distinctly presented to the reader, his familiar knowledge of the existing course of jurisprudence will lead to the most erroneous conclusions. Many of those who have descanted upon the excellence of our venerated national franchise, seem to have supposed that it has descended to us unchanged from the days of Alfred; and the Patriot who claims the Jury as the "Judgment by his Peers," secured by Magna Charta, can never have suspected how distinctly the trial is resolved into a mere examination of witnesses. Thus, according to the "Law of Normandy," criminals were convicted or absolved by an Inquest, composed of Twenty-four good and lawful men of the country, summoned by the Serjeant from the neighbourhood where the murder or the theft had been committed. The officer is directed to select "those " who are believed to be best informed of the truth of the matter,

Trial by Jury, not to be considered as the "*Judicium Parium*" promised or secured by Magna Charta.

Norman Inquests, consisting of Twenty-four good and lawful men, summoned from the place where the crime had

Part I. Ch. VIII.

"and how it happened." None were to be adduced whose integrity or credibility might be reasonably distrusted, either by the accuser or the accused. Known friends, or declared enemies, and near relations of either party, were excluded from the Inquest; and the jurors were to be brought into court suddenly and without notice, so that they might not be bribed, intimidated, or corrupted. Before the culprit was put upon his trial, a preliminary inquest was taken by Four Knights, who were questioned touching their belief of his guilt; and, in their presence, the Bailiff afterwards interrogated the twenty-four jurors, not as composing one body, but privately and separately from each other. They were then assembled and confronted with the culprit, who could challenge any one for lawful cause; and if the challenge was allowed, the testimony of that juror was rejected. The Judge then "recorded," or declared the verdict, in which twenty, at least, were required to concur[a].

been committed, and examined privily and apart by the Judge before they were confronted with the Prisoner.

Norman "Recognitors" in civil cases.

Recognitors[b], as they were called in Normandy, were in like manner the witnesses of the fact in civil cases. On the trial by "the Brief d'Establie," or the Norman Writ of Right, we are told that those are to be sworn "who were born in the neighbour-"hood, and who have long dwelt there; and such ought they "to be, that it may be believed they know the truth of the "case, and that they will speak the truth when they shall be "asked."

Norman Inquests or Recognitions, by which public rights or privileges were testified.

Public rights and privileges, claimed either as belonging to the Sovereign of Normandy, or to the community, were testified by Inquests, in which a similar language is employed. The "Inquest "of the King's Regalities in the Archbishopric of Rouen," is a plain narrative of facts, said or told by the sworn Knights, who recollected the proceedings which had taken place in former times upon the vacancies of the See. And the "Establishment," intended to decide the conflicting pretensions of clerical immunity and territorial jurisdiction, is founded upon the declarations of the Barons, who, by virtue of their oaths, "said forth" that which they had seen in the days of Henry and of Richard, late

[a] Grand Coustumier, chapters 68, 69, 103. See Part II., *Proofs and Illustrations*, p. 267.

[b] The Knights of the Grand Assize are usually called *Recognitors*, κατ' ἐξοχήν. But any persons sworn upon an Inquest were indifferently termed "Juratores" and "Recognitores"; Bracton, lib. v. c. 9, de Warrantia, § 14.

Kings of England[a], and who in person recorded the testimony which they gave.

English Inquests, composed of Witnesses, sworn to speak the truth according to the best of their knowledge.

The same features are found in the old English law. The jurors were confessedly witnesses; when they swore, with uplifted hands, "Hear this, ye Justices! We will say the truth "concerning those matters which ye shall ask on the King's "behalf; and for no cause will we be hindered, that we shall "not speak the truth."[b] And the grievance which the Church sustained by subjecting her members to the jurisdiction of the secular Tribunal, which condemned them as thieves and murderers, is described in the Papal Bull as a trial in which Twelve Laymen are admitted as witnesses against the Clerk, to whom, if they declare that he committed the crime, such faith is given, that the culprit is condemned to death[c]. In civil trials, their functions are declared with equal clearness; and the legal rules relating to their character, together with the forms and practice of the Courts, are consistent, as applied to persons under judicial examination, but entirely unintelligible if they are considered in any other capacity. If any of those Knights who appeared upon the Grand Assize happened to be unacquainted with the truth of the matter, they were to be rejected and others to be chosen, until Twelve were unanimous. If the jurors professed to know the truth, but dissented from one another in their statements of the fact, the array was "afforced"; that is to say, other witnesses were sought for, cognizant of the disputed allegations, until Twelve at least could be found who would give testimony—for that number was deemed almost indispensable. In the charter which exempted the patentee from serving on Juries or Assizes, the privilege was not to avail him when his attendance was required as a witness in a deed. "If there are not any Knights"—it is Sir Ranulf de Glanville who proposes the question—"in the neighbourhood, who

Ancient legal rules respecting Jurors, consistent with their character as witnesses.

Rejection of Witnesses or Recognitors, who had been summoned, but who were unacquainted with the facts, and substitution of others in their stead.

[a] Inquisitio de Regalia Rothomagensi, Duchesne, Historiæ Normannorum Scriptores, p. 1057. Stabilimentum factum apud Rothomagum inter Clericos et Barones Normanniæ, A.D. 1205, Duchesne, p. 1059. [Inquest concerning the Regalities at Rouen, Duchesne, Writers of the History of the Normans, p. 1057. Settlement made at Rouen between the Clergy and Barons of Normandy.]

[b] Bracton, lib. iii., de Corona, c. 22. Mirror, § 38.

[c] Bulla Papæ Clementis V. "de Gravaminibus," dated 28 Nov. 1308. [The bull of Pope Clement V., concerning Grievances.] Concilia, vol. ii. p. 323.

Part I. Ch. VIII.

" are acquainted with the matter in dispute, to what means shall " the Court resort?"—and when, in considering this hypothetical case, he discusses the law, he supposes that two or three or more lawful men, beneath the degree of Knighthood, and not amounting to twelve, may offer themselves as "Witnesses" before the tribunal[a].

An exception was taken to the recognitors for any reason which occasioned the rejection of a witness in the Ecclesiastical Courts[b]. Their knowledge was to be as precise as was compatible with the nature of the proof; they were to be acquainted with the merits of the case, either from what they had personally seen or heard, from the declarations of their fathers, or from other sources falling within their own immediate cognizance[c]. Most of the facts upon which the title to property depended, were public and notorious; and the usages and customs of the age facilitated a mode of investigation which has become less adapted to our comparative privacy. The forms, the festivities and the ceremonies, accompanying the hours of joy and the days of sorrow, which form the distinguishing epochs in the brief chronicle of domestic life, impressed them upon the memory of the people at large. The parchment might be recommended by custom, but it was not required by law; and they had no registers to consult, no books to open. By the declaration of the husband made at the Church door, the wife was endowed in the presence of the assembled relations, and before all the merry attendants of the bridal train. The birth of the heir was recollected by the retainers who had participated in the cheer of the Baronial hall; and the death of the ancestor was proved by the friends who had heard the wailings of the widow, or who had followed the corpse to the grave. Hence Trial by Jury was an appeal to the knowledge of the country; and the Sheriff, in naming his panel, performed his duty by summoning those individuals from amongst the inhabitants of the Country who were best acquainted with the points at issue. If, from peculiar circumstances, the witnesses of a fact were previously marked out and known, then they were particularly required to testify. Thus, when a Charter was pleaded, the witnesses named in the attesting clause of the

Jurors taken from the Country at large, when the facts which they were required to prove were public and notorious;

but if there were any known Witnesses of facts, such as the persons named in the *Teste* of a Deed, or who had been present when an endowment had been made *ad ostium Ecclesiæ*, they were returned upon the Jury.

[a] Statutum de Marleberge [The Statute of Marlborough], 53 Hen. III., c. 14. Glanville, lib. ii. c. 21.

[b] Glanville, lib. ii. c. 12.

[c] Glanville, lib. ii. c. 17.

instrument, and who had been present in the Folkmoot, the Shire, or the Manor Court, when the seal was affixed by the donor, were included in the panel; and when a grant had been made by parol, the witnesses were sought out by the Sheriff, and returned upon the Jury[a].

Trial by Compurgators, offers many resemblances to a Jury; for the dubious suspicion that fell upon the culprit might often be decided by their knowledge of his general conduct and conversation, or of some fact or circumstance which convinced them of his innocence. The Thanes or Echevins may equally be confounded with a Jury; since the floating, customary, unwritten law of the country was a fact to be ascertained from their belief and knowledge, and, unlike the suitors, they were sworn to the due discharge of their duty. Still, each class will be found to have some peculiar distinction. Virtually elected by the community, the Echevins constituted a permanent Magistracy, and their duty extended beyond the mere decision of a contested question; but the Jurors, when they were traversers, or triers of the issue, were selected by the King's officers, and empanelled for that time and turn. The Juror deposed to facts: the Compurgator pledged his faith. And whilst a Freeman, residing upon "Dominical land," or holding by customary tenure, was admissible as a Compurgator, he could not be put upon an Inquest of Witnesses[b], unless he was qualified by land in "property"; a

(See above, p. 103.)

Distinctions between Echevins and Jurors: and between Compurgators and Jurors.

According to the Capitularies, a Freeman residing upon "Dominical" or customary land, was admissible as a Compurgator, but not as a Juror.

[a] Placita coram Rege, Trin. 31 Ed. I. Bracton, lib. iv. cap. 15. The quaint rubrics of the sections afford a summary of their contents. § 1. Si warrantus contenderit de warrantia, et Charta producatur calumniata, et Petens se posuerit super patriam et testes in brevi nominatos. § 2. Summoneantur testes, sed quid si manentes fuerint in diversis comitatibus? [§ 1. If the man who has received a warranty sues on his warranty and the Charter is produced and challenged, and the Plaintiff has placed himself on his country and the witnesses named in the writ. § 2. Let the witnesses be summoned: but what if they dwell in different counties?]

[b] Capitula Ludovici Pii quæ pro lege habenda sunt, A.D. 827, § 6. Capitul. lib. v. § 301. De liberis hominibus qui proprium non habent, sed in Terrâ Dominicâ resident, ad testimonium recipiendis. [The Capitulars of Louis the Pious which are to be considered as law, A.D. 827, § 6. Capitulars, bk. v. § 301. Concerning the reception of the evidence of free men who have no property, but dwell on their lord's demesne.]

Part I. Ch. VIII.

rule of law which, in civil cases, was equally adopted in England[a].

Human institutions, like the works of nature, are links of one chain: they cannot be severed, so as to fit in all respects into an artificial classification; and we may readily admit, that these Tribunals were not always distinguishable from each other with perfect accuracy; yet it is evident, that neither the Compurgators nor the Echevins were required to perform the duties which uniformly belonged to the Jury. But, in the capitulary, which directs that the "Witnesses" were to be chosen from the peculiar neighbourhood, the Pagus, the Town, or the County, we recognize the principle of the English "Trial by the Country," to which the ancient common law adhered so anxiously, that, if the venue was laid in a peculiar street, the Jury could only be returned from the street itself; whilst a trespass committed in Westminster Hall was to be testified by a Jury of the dealers and traders who were stationed at their booths within its spacious walls. The election of the Frankish witnesses was to be made by the "Missus" or the "Comes," as amongst us by the "Vicecomes,"[1] or Sheriff, who replaced the ancient Earl. They were to be separately examined, in the manner directed by the law of Normandy[b]. Twelve are enumerated as offering their testimony. Until they gave their verdict they were to be kept without meat or drink; and none could be challenged but for lawful cause[c].

Witnesses or Jurors amongst the Franks, how elected and examined.

It has been maintained, with some degree of confidence, that this "admirable criterion of truth, and most important guardian "of public and private liberty, is due to our Saxon ancestors"[d];

Juries in criminal cases sometimes, but erroneously,

[a] Magn. Rot. 31 Hen. II. rot. 14. Londonia et Midd. Ibid. rot. 11. Devenescire. Madox, Exch. p. 379.

[b] Tabularium Persiense, A.D. 818. Du Cange, vol. i. p. 1600.

[c] Car. Magni Cap. Secundum, A.D. 805, § 11. Cap. Tertium, A.D. 805, § 13.

Car. Magni Cap. Primum, A.D. 809, § 16.

Car. Magni Cap. Tertium, A.D. 812, § 3.

Ludovici Pii Cap. Primum, A.D. 829, § 10.

Capitul., lib. iv. App. II., § 16.

[d] Blackstone, vol. iv. p. 414; who follows Lord Coke, Spelman and Nicholson. Hickes takes the opposite side of the question, and maintains that the Inquest is purely Norman. It will be recollected that both parties have omitted to mark the essential distinction between what may be termed *Municipal Juries*, described in Chap. III.,

and those who support this proposition have adduced the chapters which we have before quoted from the Anglo-Saxon laws. An accusation, however, is not a trial; and there is a wide difference between the Jurors who were recognized functionaries bound to bear testimony by virtue of their station, and the array summoned to give evidence on a particular case, and whose office determines with the occasion for which they were convened: and the individuals who have been considered as Jurors, in the modern sense of the term, were either sworn Magistrates, or performing municipal duties. Assembled in the Wapentake, like the Frankish Echevins, the charge preferred upon oath by the Twelve Thanes and the Gerefa was a denunciation or impeachment, not an investigation of the crime. If, as may be admitted, they declared the law upon oath, they did not examine the guilt of the party; whilst the Jurats who were assigned to legalize the transfer of personal property, and who seem to have been afterwards united to the municipalities of the Burghs, could only give their verdict with respect to the transactions which they had been called in to witness.

supposed to be an Anglo-Saxon institution. The Twelve sworn Thanes of the Wapentake (see above, pp. 80 and 175) possessed the power of accusation, but not of trial. The Attesting Jurats (see above, p. 155) were only empowered to give a verdict respecting the transactions which they had been required to witness.

With the exception of the special cases to which the statutes of Edgar apply, the usual mode of proof was by the unsworn testimony of the suitors. Contracts for the sale of land, Charters by which the property was transferred, were proved by the Suitors of the Folkmoot; and their evidence was frequently required, though other individuals who had specially attested the transaction, were sometimes vouched as Witnesses, together with the "Meliores,"[1] "Fideles," or "Proceres" of the Hundreds. It is therefore probable that when the proceedings were regularly conducted, the witnesses proved the payment of the money or the covenants of the sale; whilst the Hundredors were required to declare those facts which were notorious to the community at large; such as the quiet possession and seisin of a party through whom the title was derived.

(See above, pp. 155, 156.)

(See above, p. 116.)

Compurgation was always made by oath; the solemn assertion was the very foundation of the process. Evidence, on the contrary, was usually given upon the simple affirmation of the witness. It may be objected that amongst the Saxon Custumals is an oath adapted to the examination of a witness testifying the facts which he had seen and heard. This oath, however, was applicable only

Distinction between the Anglo-Saxon Compurgators and the Anglo-Saxon witnesses; the former being always sworn, whilst the

and the Traverse Juries employed for the proof of facts in relation to the trial of an individual.

Part I. Ch. VIII.

to those special and selected witnesses who were required by the law for the purpose of attesting contracts and legal transactions[a]; the evidence given by the suitors of the Folkmoot was not necessarily confirmed by this sanction: there were deviations from this practice, but the exceptions prove the rule, that they could only be required to state their evidence, which was received as an unsworn declaration. If they chose to strengthen their assertions by an oath, they might do so; and we find cases in which the oath was proffered; but even then it was only the vociferation of the crowd, tendered rather for the purpose of bearing down opposition, than for the furtherance of justice. If an appeal was made to the suitors of the Hundred, their testimony often became the mere acclamation of an angry multitude, better calculated to inspire apprehension than to afford satisfactory evidence of the truth. Lawsuits were prosecuted with the greatest bitterness and pertinacity. Ignorant and uncivilized men view the proceedings of the law merely as an incident in the quarrel, not as the means of restoring peace between the parties. The witness is an avowed and open partizan: his honour and his interest are involved in the success of his principal; and the litigant who could appear in the "Maxima Concio"[1] of an Anglo-Saxon Kingdom, at the head of a thousand sturdy witnesses, all ready to swear on behalf of their Leader, must have had little reason to doubt the result of a controversy with an inferior adversary[b]. The suspicious character of these proceedings is shewn by the expedients to which the courts had recourse for the purpose of avoiding them. When a more accurate and dispassionate investigation was required, it was the practice to elect some of the best men of the country, named, examined and sworn by mutual consent of the parties, who had agreed to abide by their verdict[c].

latter gave their evidence without oath, except in certain cases, forming an exception to the general rule.

Custom introduced in the Anglo-Saxon Courts of occasionally selecting some of the best men of the Country, who were named, sworn and examined by the mutual consent of the parties.

This practice formed a near approach to the "witnesses" of the capitularies; and, after the Conquest, whenever any discussion arose in the King's Courts, or by virtue of his writ or mandate, we may observe the tendency of the tribunal to encourage a proceeding, which, without being entirely new to the Anglo-Saxon, might be brought within the canon of the Norman law. Of this, we find an early and important example in the memorable suit in

Anglo-Norman tribunals incline towards the introduction of Trial by Inquest or Jury, as in the trial of the

[a] Canute, II. § 24.

[b] Hist. Eliensis, pp. 473–476; and see Hickes, Dissert. Epist. p. 42.

[c] Hist. Ramesiensis, p. 456.

the Folkmoot of Cambridge, held pursuant to the commission of the Conqueror; when certain lands belonging to the See of Rochester were claimed by the "Vicecomes" on behalf of the Crown[a]. Twelve were elected by the men of the County from amongst themselves, and, being sworn, these were charged to declare the truth. The Jury, in this instance, was not demanded by the parties, but ordered by Odo, Earl of Kent and Bishop of Bayeux, who presided as Justiciar, and who, distrusting the general testimony which the Shire had given in favour of the Sovereign, was desirous of obtaining more conclusive evidence. The Jury, whose names are transmitted to us, and who are designated as the best men of the County, gave a verdict against Gundulfus; which, however, was afterwards annulled, and the Jury adjudged to have been forsworn.

suit between Pichot, "Vicecomes" of Cambridge, on the part of the Crown, and Gundulfus, Bishop of Rochester, A.D. 1078.

The process for the restitution of the lands of the Church of Ely was of an analogous description: the Shires which had assembled at a former "Placitum," were again convened before Lanfranc, Archbishop of Canterbury, Robert, Count of Mortain, and Geoffrey, Bishop of Coutances; and from the assembled suitors, so many Englishmen were to be elected as could testify how the possessions of the Church were held, on the day when "King "Edward was alive and dead"; and by their oath, the claims of St. Etheldreda were to be decided[b].

A.D. 1080. Suit for the recovery of the lands of the Church of Ely, decided by the oaths of the Englishmen elected from the Shires, convened at the Placitum held before the King's Justiciars, and who could swear how the possessions were held "on the day when King Edward lived and died."

In the Folkmoot held on Pènnenden Heath, when three days were employed in discussing the adverse rights of Odo and Lanfranc, the "witnesses" are mentioned, though not so prominently as in the preceding instances; but the parties disputed the law as well as the facts; and the Norman Earl and the Norman Prelate contended for the Anglo-Saxon Franchises, according to the construction of Anglo-Saxon jurisprudence. The Witan, the English versed in the old usages and customs of their country, were ordered to attend; and the hoary Egilric, Bishop of Chichester, was brought thither in a chariot drawn by four horses, to record the jurisprudence of the old time. The Inquest, therefore, was only of subordinate importance or necessity[c].

Folkmoot of Pennenden assembled for the decision of the disputes between Odo, as Earl of Kent, and Lanfranc, Archbishop of Canterbury; no Jurors required, the dispute being a question of law and not of fact.

[a] De contentione inter Gundulfum et Pichot; Textus Roffensis, p. 149. [Concerning the suit between Gundulf and Picot.]

[b] Charter of William the Conqueror. Monasticon, vol. i. p. 478. See Part II., *Proofs and Illustrations*, p. 237.

[c] De Placito apud Pinendenam inter Lanfrancum Archiepiscopum, et Odonem Bajocensem Episcopum, Spicilegium ad Eadmerum,

Part I. Ch. VIII.

In the subsequent reigns, declarations upon oath, or "recognitions," as they were occasionally termed, made by the "probi homines" of the jurisdiction, began to be more frequent. Still the practice appears only as a mode of ascertaining facts, which, however expedient or favoured by the law, was not restricted by any positive and inviolable rules. The Reeve or Dapifer, and such "good neighbours" as he might name, could be empanelled to "declare the truth"; and, pursuant to their verdict, the Plaintiff obtained the enjoyment of his Franchise[a]. Sometimes, a general direction was given; and the men of the County were charged, "as they loved the King," to "say forth the truth," by which the tenure was to be decided[b]. Sometimes, after a complaint had been preferred to the King, the Hundreds were convened before the Sheriff, and the inquisition was taken pursuant to his command, by sixteen good and lawful men from four adjoining Townships[c]. If a right of pannage was claimed in the Royal forest, the King informed himself of the justice of the demand by the recognition of the lawful men of the Hundred[d]. In another case, fourteen of the oldest men of the City of London were empanelled in the Court of Husting, according to the King's writ, to decide a suit brought by the Abbot of Caen for the possession of a curtilage. Four only swore; and their oath being deemed sufficient, the Abbot discharged the others from the panel. The direction, that the Jurors or Witnesses should be chosen from those individuals whose age rendered them more competent to declare the truth, is particularly enforced by another writ of Henry II., which commands the Sheriff to cause Twenty-four of the County of Berks to be selected from amongst the oldest men of the time of Henry I. If they could swear that

Examples of Inquests in the reigns of Hen. I. and Hen. II.

Sometimes required to be chosen from the oldest men of the County.

p. 197. [Concerning the suit at Pennenden between Archbishop Lanfranc, and Odo, Bishop of Bayeux.]

[a] Writs of William the Atheling, son of Hen. I., issued by him during the absence of his father, from the Black Book of St. Austin's. MS. Cott. Julius D ii. Part II., *Proofs and Illustrations* pp. 239, 240.

[b] Writ of Hen. I., granted at the suit of the Abbot of Abingdon. Book of Abingdon. MS. Cott. Claudius D vi. See Part II., *Proofs and Illustrations*, pp. 242 ff.

[c] Proceedings *tempore* Hen. II. From the Chartulary of St. Stephen's at Caen, in the possession of the Abbé de la Rue. Part II., *Proofs and Illustrations*, p. 246.

[d] Writ of Hen. II. in favour of the Monks of Abingdon. Book of Abingdon. See Part II., *Proofs and Illustrations*, p. 245.

the Monks of Abingdon had fully enjoyed the rights of the market in those days, "then let it be so now"; but, if they saw it not, and could not swear to the fact, the claimants were to lose the franchise which they asserted. The Jurors were named from amongst the suitors in full county, and a verdict was given for the monks; but the men of Wallingford having persuaded the King that the tenants of the Abbot were more anxious to promote the temporal interest of their Lord, than to obey the dictates of conscience, he commanded that a second inquest should be taken, in which half the "Seniores" were to be chosen from the Burgh of Wallingford, and half from the County at large; and all tenants of the Abbey were to be excluded. Each array gave a separate, discordant and unsatisfactory verdict; and the Earl of Leicester, who presided as Justiciar, would not undertake to pass judgment, but reported or recorded the proceedings to the King. At the same time, however, the Earl gave evidence, that he, when a boy, was educated at Abingdon, and that he had seen that, in the days of William Rufus, the monks enjoyed the franchise which they claimed. "And the King, delighted with the testimony of such "a man," was convinced that more faith was to be placed in one speaker of truth, than in the declarations of many, whose disputes induced them to depart from veracity[a].

Suit between the men of Wallingford and the Convent of Abingdon, 1159–1169.

Jurors elected by the Sheriff in full County.

Testimony of Robert de Beaumont, Earl of Leicester, the Justiciar, considered as counter-vailing the discordant verdicts of the Jurors.

Trial by a tribunal of sworn witnesses, elected out of the Popular Courts, and employed for the decision of rights of property, may, as before mentioned, be traced to the Anglo-Saxon period; but, in criminal cases, the Jury appears to have been unknown until enacted by the Conqueror; for the same Charter, which compelled the Englishman to resort to the Battle Trial, authoritatively directed the "Witnesses," according to the "Law of Normandy," as the test of the guilt or innocence of the accused. Yet, the Statute was adapted to the peculiar case of Appeals between the Anglo-Saxon and the Norman, and does not profess to be a general regulation. Amongst the Anglo-Saxons, therefore, and in the Courts which were purely Anglo-Saxon, the mode of trial, at first, remained unaltered; though a near approximation to it was effected by those laws which, in all cases, conjoined the oath to every accusation or impeachment preferred by or in behalf of the country.

Statute of William the Conqueror (see above, p. 182) introduces trial by "Witnesses" in the particular case of an Appeal brought by an Englishman against a Norman, or vice versâ.

[a] Placitum de Foro Abindoniæ, Book of Abingdon. [Plea concerning the market at Abingdon.] MS. Cott. Claudius B vi. Part II., *Proofs and Illustrations*, p. 244.

Part I. Ch. VIII.

Assize of Clarendon, re-enacted at Northampton, enacted by Hen. II. "per consilium Archiepiscoporum, Episcoporum, Abbatum et cæterorum Baronum suorum," about 1176.

Frankpledge, both seignorial and collective, enforced by these Assizes or Statutes.

Inquests to be taken by Twelve Knights of each Hundred, and by the Four Men of each Township, assembled according to the Anglo-Saxon law, and sworn according to the Norman law; the Twelve Knights being probably substituted for the Twelve Thanes of the Anglo-Saxon period.

The "Assizes" of Clarendon or of Northampton[1], enacted by Henry II., were intended, in the words of the preamble, "for the "preservation of the peace and the furtherance of justice," and increased the rigour of the preceding laws[a]. All the customs relating to the Frankpledge, both seignorial and collective, were enforced. No one was to receive or harbour any man in his House, his Land, or his Soke, unless he would be answerable for their appearance, or unless they were in Freeborh. With respect to the Decennaries, it was declared, that no Franchise, not even the privileges of the honour of Warenne[2], should exclude the Sheriff from entering the jurisdiction, to see that the Frankpledge was duly held; and it may be observed, that such a clause bespeaks a very extraordinary confidence in the strength of the Royal authority.

In all the Shires, the Justices who represented the King's person, were to "make inquiry," by the oaths of Twelve Knights or other lawful men of each Hundred, together with the Four Men from each Township, of all murders, robberies, and thefts, and of all who had harboured such offenders since the King's accession to the throne. It appears that the same power of inquiry was given to the Sheriffs; but, in such case, the conviction was to be "recorded" to the Justices in the following Iter, by two lawful men of the Hundred, who appeared as representatives of the Twelve. We have seen that the Twelve sworn Thanes or Echevins, who were also the Judges of the Hundred, in the Anglo-Saxon era, performed the duty of these selected Knights; and it is probable that a new organization of the territorial Municipality was completed by Henry's Assizes. It is impossible to ascertain the period when the change began; but the concurrent existence of the Judges and the Jurors of the Shire[b], seems to shew

[a] This "Assize" was first enacted at Clarendon, and afterwards "recorded" at Northampton. It must not be confounded with the Constitutions of Clarendon. An "Assize," enacted by Hen. II., which, from its tenour, appears to be either the original "Assize of Clarendon," or an "Assize" founded upon that law, exists in a very valuable Manuscript in the Museum (Bib. Reg. 14. C. 2.) from which it is printed in Part II., *Proofs and Illustrations*, p. 221. Another text, containing the re-enactment at Northampton, A.D. 1176, but apparently somewhat abridged, is given by Benedictus Abbas (p. 131), and from him by Hoveden. See also the "Dialogus de Scaccario."

[b] Magn. Rot. Anno incerto Hen. I., vulgo 5° Steph. [The Great Roll of the Pipe of an undetermined[4] year in the reign of Henry I.,

that the first innovation consisted in calling upon them to perform a double duty. In the County of Chester, which retained much of its ancient Anglo-Saxon law, the "Judicatores" appear as late as Edward I.; and the Leet Juries, whether acting as accusers, as the electors of the officers of the Township, or as the Magistracy of the Burgh, exist at the present day. Indeed, during the transition period in which the Jury Trial was rising into importance, the Anglo-Saxon Folkmoot was still its preliminary and foundation. The Hundred or the Shire was convened, and then the Jurors were elected in the Assembly. The old and the new jurisprudence were coexistent. The close analogy between the functions of the Echevins as Witnesses of the Law, to those assigned to them if they were also summoned as witnesses of a fact, would, without any intent of destroying the Anglo-Saxon jurisprudence, introduce them to the character which they afterwards assumed; and the "Assize," due to the prudence of Henry Fitz-Aylwin, the first Lord Mayor of London, which empowers the Aldermen elected in full Husting, to bear witness after the manner of a Jury, affords a clear indication of the mode by which the process was effected[a]. With respect to the Four Men and the Reeve, they had sustained no alteration except by the imposition of an oath confirming the declaration which had hitherto been unsworn. The Remedial Court convened by the Justices for the County, was, therefore, substantially, the national Folkmoot, with the addition only of that sanction which was considered as imposing a stronger bond upon the conscience of the suitors.

Fitz-Aylwin's Assize.

The criminal, presented or impeached by the inquests, was forthwith to undergo the Ordeal; but it is important to remark, that, although he might be "cleared" by this test, the legislator refused to admit his innocence; for, if he was of bad fame, or had not procured the testimony of his Lord, he was, though discharged from the accusation, to abjure the country within forty days. This law was also extended to the acquitted murderer; but, if the culprit had been accused of lesser crimes, he might remain in England upon finding pledges for his good conduct. These laws, by abolishing the Trial by Compurgation in criminal cases, entirely altered the course of the old jurisprudence: the

No Compurgation allowed to the Criminal after the Presentment of the Inquest, but he was forthwith to undergo the Ordeal.

Compurgation in criminal cases, abolished by the Assizes of Hen. II. but retained as a special franchise in some Boroughs (see above, pp. 177, 178).

commonly assigned to the fifth year of the reign of Stephen.] Madox, Exch., p. 316.

[a] MS. Cott. Vespasian D xvi. See Part II., *Proofs and Illustrations*, p. 231.

Part I. Ch. VIII.

privilege which the Anglo-Saxon had possessed of defending himself by the opinion of his neighbours, was lost to the community at large, and is henceforth to be traced only as a special franchise in some of the Boroughs to which the Assize did not extend. The first presentment, instead of being considered as affording grounds for suspicion, became nearly equivalent to a final trial; and the appeal to the Ordeal, whilst it gave the prisoner one chance more of escaping without loss of life or limb, still only enabled him to purchase the remission of his crime by perpetual banishment and poverty.

The Presentment rendered nearly equivalent to a final trial.

An Assize enacted by Richard, soon after his return from the Holy Land, regulates the mode of electing the Knights of the Hundred[a]; and the practice of the King's Court becomes intelligible from the preservation of our legal records, of which the series now begins. Upon the presentment of the "malecredence," or violent suspicion of the Jury, which usually consisted either of the Four Men of the three adjoining Townships, or of the Knights of the Hundred, the culprit was adjudged to clear himself by the Ordeal: and the water or the fire might be equally chosen by the offender. If the Knights of the County "suspected" those criminals whom the Jurors of the Hundreds had exonerated, the same judgment was passed, and the first acquittal was not considered as a bar to the second trial of the Culprit. The failure of the test subjected the offender to the utmost penalty of the law[b].

Assize 5 Ric. I., A.D. 1194, regulating the mode of electing the Knights of the Hundreds.

Mode of Trial, as collected from the "Assizes" and the records of the "Curia Regis"; The criminal, on being declared by the Inquests to be "malecreditus," or Folcungetreu (see above, p. 169), is adjudged to undergo the Ordeal; if he fails, he is subjected to capital punishment.

Whilst the exercise of criminal jurisdiction was regulated by the laws of Henry II., a much greater extension was given to Inquest Trial by other "Assizes," of which the text is wholly lost, but whose substance is noticed by our ancient legal writers, and from whence many of the forms of process still subsisting have been deduced. Wherever it was practicable, Henry seems to have directed that his Court should proceed by "Recognition," which, notwithstanding his experience of its fallibility in peculiar instances, was greatly favoured and encouraged. If the contest arose between the Clerk and the Feudal Lord, concerning the tenure of the Church Land, the question, whether the glebe was

"Assizes" of Henry II. relating to civil trials, of which the text is lost, but of which the substance is noticed by Glanville and Bracton.

Inquests or "recognitions" directed by the Constitutions of Clarendon.

[a] Hoveden, p. 744.

[b] Magn. Rot. 31 Hen. II. Everwickshire; 32 Hen. II. Lanc.; 31 Hen. III. Essex and Hertf. Placita Coronæ apud Stafford, 10 Ric. I. m. 8. Placita Coronæ in Com. Wilts. an. incert. Ric. I. m. 4. Rot. Itin. Bedeford, 4 John, m. 5. Rot. Itin. Stafford, 5 John. Rot. Itin. Northampton, 5 John, m. 1.

held in Frank-almoign[1] or as lay fee, was determined by the "recognition" of the Twelve lawful men empanelled before the King's Justiciar[a]; and the same regulation, repeated nearly in the same words, in the Establishments of the Norman Barons, and in the decrees of the Exchequer of Normandy, shews the conformity of the legislation which prevailed in his dominions[b]. Another Assize forbade the forcible entry upon the lands, when possession had given a freehold right to the tenant; and the fact of the "invasion" having been committed within the period of legal limitation, was ascertained by the recognition of the twelve free and lawful men, taken pursuant to the writ of "Novel Disseisin," an expeditious and useful remedy, due to the "wisdom of the Sovereign," and praised by the Jurist as having been framed with great study and care[c]. And, instead of leaving the right of ownership to be determined by the conflict of the Champions, a Statute emphatically termed the "Grand Assize,"[2] enabled the Defendant, if he thought proper, to abide by the testimony of the Twelve good and lawful Knights, chosen by Four others of the Vicinage, and whose oaths gave a final decision to the contested claim. This law was described as a benefit, which the clemency of the prince had bestowed upon the people; and when the Tenant chose to avail himself of its provisions, he was said to "put himself upon the King's Assize," or "to pray "the benefit of the law."[d] In all these cases, the employment of the Recognitors, which had hitherto been arbitrary and undefined, became subjected to fixed rules. The same mode of ascertaining disputed facts was rapidly extended to many other of the pleas which were brought before the King's tribunal; and in the following era, the Jury appears a well-known mode of trial, holding the most prominent station in legal procedure; yet not,

Assize of "Novel Disseisin." (See above, p. 186.)

"Grand Assize," which gave the Tenant the option of trying his right by "recognition," instead of defending himself by his Champion.

[a] Constitutiones Clarendoniæ, c. 6.

[b] Stabilimentum apud Rothomagum, quoted at p. 201. Arrestum Scaccarii Normanniæ an. 1218, apud Falesiam in Scaccario Paschæ. De recognitione facienda utrum aliquid eleemosyna vel feudum laicale sit, Concilia Rotomagensis Provinciæ, p. 127. [Settlement at Rouen. The Decree of the Exchequer of Normandy, made at Falaise at the Easter Exchequer, 1218. Concerning the holding of an inquest whether anything be Frank-almoign or lay fee, The Councils of the Province of Rouen, p. 127.]

[c] Glanville, lib. iii. c. 32. Bracton, lib. iv., de Assisa Novæ Disseisinæ, c. 6.

[d] Glanville, lib. iii. c. 8.

however, so as to exclude such proofs as might be more conclusive, nor, in some cases, could it be employed without the express consent of both parties. A defendant might thus rely upon an unsworn "Secta," and refuse to abide by the oaths of the Jury[a]. A question of parentage was investigated, in the first instance, by the testimony of the relations; for an "Assize" would not lie between parties descended from the same ancestor. The kinsmen, in such a case, were examined in court, and judgment given for him who was nearest to the common stock, without calling in the aid of a Jury to testify to facts which had been sufficiently proved by the members of the same family. The state of the villein was determined by the condition of those who had sprung from the same stock and lineage, and not by appealing to the country[b]; and, as it must be recollected that in no case whatever does it appear that a "Witness" or "Sectator" was sworn, the absence of the oath entirely separates these proofs from the Jury Trial.

Juries not generally in use in personal actions, in which the Plaintiff usually supported his claim by unsworn witnesses, or the "Secta," whose testimony was rebutted by the Compurgators on the part of the Defendant.

In personal actions, the Jury was more rarely employed than in suits relating to land or to territorial franchises; and "Wager of Law," derived from the Anglo-Saxon Compurgation, usually supplied the place of the Recognitor's testimony[c]. If one Witness or Sectator was produced in support of the plaintiff's demand, the defendant might rebut it by his own oath, which appears in substance as a version of the Anglo-Saxon formula; and this oath, when supported by the asseveration of two neighbours, was sufficient to exonerate him from the claim. Two Witnesses were refuted by Four Compurgators; and so on, until the full number of twelve was completed, beyond which it was not necessary to proceed.

Juries not introduced in the popular Courts of Anglo-Saxon origin, except by virtue of the King's writ. Thus, in the County Court, the Sheriff could not empanel a Jury, except by virtue of a writ of "*Justicies*."

It may be observed, that an inquest or Jury, in civil cases, was never adopted according to the usual course of the popular Courts of Anglo-Saxon origin, unless by virtue of the King's special precept. When an action was commenced in the County Court by that writ, which empowered the Sheriff to act as the King's Justiciar, an inquest might be summoned; but, if the suit was grounded upon a plaint, the opinion of the suitors, or the compurgatory oath, constituted the common law trial: in

[a] Rot. Itin. Northampton, quoted at p. 212.

[b] Glanville, lib. ii. c. 6.

[c] Fleta, lib. ii. c. 6; but the form of Wager of Law was not uniform at different periods. See Part II., *Proofs and Illustrations*, p. 165.

these proceedings, however, at later periods, there were many irregularities arising from the breaking down of the Anglo-Saxon jurisprudence: parts and portions of the ancient forms continued in use, though no longer guided by their ancient and consistent principles. The same rule was observed in the Manorial Courts, "in which by common right all pleas were determined by wager "of law." This doctrine of antiquity was kept in vigour by the Statute of Marleberge[1], which, adopting the Provisions of the Barons, prevented the Lord from compelling his freemen to "swear," that is to say, to submit to be empanelled upon an inquest, without the King's writ[a]. Even in the King's Court, the incidental traverses in a real action, such as the denial of the summons by the Tenant, were always determined by compurgators; and, in all personal actions, wager of law was the regular mode of trial, until new proceedings were instituted which enabled the Judges to introduce the Jury Trial in its stead. But this silent legislation has not destroyed the Anglo-Saxon Trial; it is out of use, but not out of force; and it may, perhaps, continue as a part of the theory of the law, until some adventurous individual shall again astonish the Court by obtaining his privilege, and, by thus informing the legislature of its existence, ensure its abolition[b].

All pleas in Manorial and other inferior Courts determined of common right by wager of law.

Attempts of Lords of Manors to compel their Tenants to be sworn on Juries in the Manor Courts frustrated by the Statute of Marleberge, 53 Hen. III.

The technical learning of the Courts, reported in the "Year Books" of our Edwards and Henrys, cannot always be safely applied in explanation of customs, which, even then, were beginning to be obscured by lapse of time; but there are still sufficient indications that the principle of "Wager of Law" rested upon the supposition, that the Plaintiff's case was not satisfactorily proved by the unsworn testimony; and upon this ground the law allowed the scale to be turned by the oaths of the compurgators. Although this practice has been attributed to the simplicity or the ignorance of the "Middle Ages,"[c] it was not destitute of fitness and consistency. A plaintiff could produce any persons,

[a] Provisiones Baronum, A.D. 1259. Ann. Burton, p. 430. Statutum de Marleberge, 53 Hen. III., cap. xxii. Bracton, lib. iii. p. 106. 1 Inst. p. 168. 2 Inst. p. 143. Glanville, lib. i. cap. 9–16.

[b] 3 Blackstone, c. 22. Hengham Magna, cap. 7; and Selden's Notes. Dugdale's Origines, p. 88. Hale's Tract on the Amendment of the Laws. King v. Williams; 4 Dowling and Ryland, 3. Fleta, lib. ii. cap. 63.

[c] Robertson, View of the State of Europe, sec. i. § 5.

known or unknown, of good or bad fame, as his witnesses. The procedure of the Civilians, perhaps contemplated by the Jurist[a], never became the law; and, as the Sectator was not sworn, the most manifest falsehood escaped without punishment or penalty. Such evidence, therefore, was considered only as an imperfect proof or presumption; and the permission given to the defendant, of defeating the assertions of the "Secta" by the oaths of men of established credit, was almost necessary for the due administration of justice, as a counterbalance to the defective proceedings allowed by the law on the part of the plaintiff. Compurgation has been stigmatized as encouraging corruption, by laying a snare for the conscience of the hardy defendant and his ready and officious friends, who might be easily tempted to perjure themselves, in order to defeat a legal claim; and it may be asked, why, instead of this dubious and awkward expedient, the English legislature did not at once meet the difficulty by enacting such laws as should have ensured a fair and cogent examination of the witnesses on either side? The most plain course is, however, not always the most obvious; and men often attempt to neutralize the mischief of one imperfect law, by enacting another law equally imperfect, but of a contrary tendency. The plan of allowing the defendant to swear away the claim, is certainly of this description; but in the nineteenth century we have not been able, as yet, to discover any mode of mediating between honesty and fraud, between avarice and misfortune, otherwise than by appointing one set of Judges, who, after great vexation and expense to the creditor, send the debtor to prison; and then employing another set of Judges, who, at the costs and charges of the insolvent, deliver him from confinement, a scheme which is scarcely less rude than the most inartificial portion of the Anglo-Saxon law.

It is probable that a Norman might, in certain cases, waive his Trial by Battle, and claim a Trial by Inquest of Witnesses, "according to the laws of Normandy." By following the Conqueror into England, his companions did not lose the privileges of their birthright: what they had, they kept. An Anglo-Saxon was, in like manner, left in possession of his national mode of Trial, by Compurgation, provided there was no conflict of jurisdiction in consequence of the personal laws of the parties. A jury was given only when a Norman was concerned. An Englishman, when accused by another Englishman, or put upon trial in an

[a] Glanville, lib. x. cap. 5.

Anglo-Saxon Tribunal, could not demand an Inquest as a matter of right: the law did not extend to such a case, unless by permission of the King. And to this cause I am inclined to assign the first origin of the practice, which enabled individuals, when charged with criminal offences, whether by appeal, or otherwise, to purchase the right of being tried by a Jury of Knights, or, as it was sometimes termed, by "a good Inquest," for which they paid a fine; and which was evidently considered as a more easy or more impartial mode of obtaining evidence than they could otherwise have claimed[a]. Somewhat of the same description was the proceeding whereby a person apprehended as a felon or murderer, was let out upon bail, after it had been shewn by an "Inquest," that the accusation was grounded upon hatred and malice. It is probable, that, so long as the Normans and the English continued distinct races, the former could always claim the Jury; but, as early as the reign of Henry II., the two nations were nearly blended into one, and the son of the Norman, born in England, seems to have been governed, in all respects, by the English law, however proudly he may have recollected his blood and lineage. During the whole of the reign of John, therefore, the law to which the people were subjected, continued in the course which it had settled by the Assizes of Clarendon and Northampton, varied only by an occasional employment of Inquest Trial, when it was granted either as a favour, or as a species of exception from the general rule; and the only Jury which could be demanded as a right, was the "inquisition," whereby the prisoner obtained his enlargement until trial, by virtue of the writ "de odio et atiâ,"[1] and for which, according to Magna Charta, no fine was to be paid[b].

Trial by Inquest or Jury occasionally *purchased* by the parties, who preferred this mode of trial to the Ordeal or the Duel.

Whilst the law was in this state, a decree was promulgated by the Council of Lateran, forbidding the Ordeal Trial throughout Christendom. The sanction which the Clergy had hitherto given to this superstition was withdrawn; and it was now declared to be unlawful. The mandate of the universal Synod of the Western Church was obeyed in England: but the authority which prohibited the Ordeal, substituted no other mode of trial in its stead. During some years, therefore, great doubts prevailed respecting the trial of those who were accused or indicted of theft, robbery, or murder, or other capital crimes; and to

Ordeal, forbidden by the 18th Canon of the fourth Lateran Council, November, 1215.

Great doubts prevail in England as to the mode of trial to be substituted in the place of the Ordeal.

[a] Plac. apud Westm. 6 Ric. I. m. 7. Rot. Itin. 5 John. Stafford.

[b] Magna Charta, Cap. 26; and see also 2 Inst.

Part I. Ch. VIII.

whom the Battle was denied, since the accusation resulted from the voice and fame of the country, and not from the charge of an individual appellant. Under these circumstances, the interposition of the legislature was imperatively required, and the substance of the temporary ordinance enacted by the King's Council for the guidance of the Courts of Law, is contained in a Writ addressed to the several Justices Itinerant, before commencing their circuits. Instructions are given with respect to the greater offenders, who, if they were so vehemently "suspected" of the crimes of which they were accused, that, even if they undertook to abjure the realm, as enjoined by the Assizes of Northampton and Clarendon, there would be reason to distrust their future good conduct, were to be kept in safe custody. If the presumptions of crime were less violent, the offender might take refuge beyond the seas; and those charged with more venial transgressions were to be liberated upon finding bail for the keeping of the peace. But the writ concludes by emphatically repeating, that "nothing certain had "been ordained for the present"; and that the Justices were to act in such a manner as would be most conformable to the dictates of good conscience and sound discretion[a].

Writ issued 3 Hen. III., containing instructions to the Justices respecting the imprisonment or enlargement of offenders, but without giving any positive directions for their Trial.

From the remarkable language employed in the precept, it is evident that the King's Counsellors were perplexed in determining the future mode of the trial of the offenders; and the mandates thus issued were merely intended to afford some directions to the Justices during one particular year. The minority of the King may have had some share in causing this hesitation: the royal advisers may even have meditated the introduction of proceedings analogous to those of the Civil and Canon Law, which, in France, were now beginning to be received into practical jurisprudence; and, if the obvious expedient of summoning the witnesses individually before the Judge, and taking their depositions upon oath had been adopted, all vestiges of trial by Jury would soon have disappeared. But the destiny of nations, like that of individuals, is decided by accidents. No further enactment was made; and the usages which already prevailed, led to a general adoption of the proceeding which had hitherto existed as a privilege or as a favour, that is to say, of proving or disproving the testimony of the first set of Inquest Men, by the testimony of a second array; and the individual, accused by the Appeal, or "presented" by the general opinion

Practice introduced of allowing the party appealed or indicted, to put himself upon a Second Inquest (now called the Petty Jury),

[a] Writ tested at Westm. 26 Jan. 3 Hen. III. Rot. Pat. m. 5.

of the Hundred, was allowed to defend himself by the particular testimony of the neighbourhood to which he belonged. For this purpose, another Inquest was empanelled, sometimes composed of Twelve persons, named from the "Visne" where the deed was alleged to have been committed; sometimes of Twenty-four, Twelve being from the "Visne" and Three from each of the adjoining Townships; and sometimes, the very same Jurymen who had presented the offence, might, if the culprit thought fit, be examined a second time as the Witnesses or Inquest of the points at issue[a]. But it is worthy of remark, that "Trial by Inquest," in criminal cases, never seems to have been introduced, except into those Courts which acted by the King's Writ or Commission. The presentment or declaration of those offences which fell within the cognizance of the Hundred Jury, or the Leet Jury, the representatives of the ancient Echevins, was final and conclusive; no traverse or trial by a second Jury, in the nature of a Petty Jury, being allowed.

Trial by Inquest was optional on the part of the culprit, both in Normandy and in England. The Court had no direct and unequivocal power of compelling a culprit to "place himself "upon the Country" for his trial. His consent was required: if he would not abide the verdict of an Inquest, the Judges could only remand him to the gaol, until he submitted to his "deliverance," and his contumacy enabled him to commute the possibility of condemnation for the certainty of imprisonment[b]. In such a case, however, the law of Normandy endeavoured to hasten his determination by keeping him upon very scanty diet[c]. And it is probable, that some similar custom prevailed in England even before it received a legislative sanction from the Statute of "Westminster the First,"[d] which provided that "felons escries," and such other delinquents of notoriously bad character, who refused to put themselves upon Inquests when they were arraigned, should be thrown into prison "forte et dure," as those who refused to abide the common law of the land. It has been doubted, whether the "grievous and fearful judgment" which condemned the obdurate felon to expire by "weight, famine and cold," was

but the Court had no power of compelling the Culprit to abide this mode of trial,

until by the Statute entitled "Westminster the First," 3 Ed. I. the Justices were authorized, in certain cases, to cast the Culprit into the prison "forte et dure."

[a] See Part II., *Proofs and Illustrations*, pp. 235 ff., where numerous examples are given of these trials under various circumstances.

[b] Rot. Itin. Glouc. 5 Hen. III.

[c] Grand Coustumier.

[d] 3 Ed. I., c. xii.

established by the legislation of Edward I., or was created by an unwarranted extension of the directions which the Statute contains. That, in point of fact, the obdurate prisoner was exposed to such "penance" as occasioned his death, is attested by the contemporary Chronicler, who, in recounting the severity, if not the cruelty of the Justices Itinerant, seems to deplore the fate of the gentle-born offender[a]. Much, however, in these early periods, was left to the discretion of the Judges, who, representing the King's person, possessed his power of explaining, directing and modifying the practice and principles of the law. The accidental humanity of the Jailor occasionally diminished the punishment; and it may be conjectured that the criminal was not invariably consigned to the horrors of starvation and protracted agony, until the reign of Henry IV., when the judgment took its definite form, that the "man or woman shall be remanded to prison, and laid "there in some low and dark house, where they shall lie naked on "the bare earth, without any rushes, litter or other couch, and "without any garment or clothing, and that they shall lie upon "their backs, their head uncovered and their feet; and there "shall be laid upon their bodies iron and stone, so much as they "may bear, and more; and the day following, they shall have "three morsels of barley-bread without any drink; and the second "day they shall drink thrice of the water that is next the house "of the prison, except running water, without any bread; and "this shall be their drink till they die."[b] But still this most grievous punishment is not to be considered as a judicial sentence. The offender was not convicted: he did not die an attainted felon: his blood was not corrupted: the heir succeeded to the estate which was transmitted to him by the father; and parental affection has been known to submit to this fearful infliction, for the purpose of protecting the child from want and infamy. "Peine forte et dure" was abolished in the last century[c]; and the silence of the offender was rendered equivalent to a legal confession of his crime. Still, in this case, he was not *tried;* and the actual consent of the prisoner was expressly required before

Judgment of "Peine forte et dure" as settled in the 15th century.

[a] Chron. Dunst., 609.

[b] The judgment is thus given by Coke, 2 Inst., p. 178, from the Year Books, Mich. 8 Hen. IV., 1., and 4 Ed. IV., 11.; and his words are retained because they contain an emphatic summary of the law. See Part II., *Proofs and Illustrations*, pp. 264–265.

[c] 12 Geo. III., c. 20.

the Jury could be empanelled to give their verdict; a form which continued indispensable until a very recent Statute abolished the solemnity of the common law[a].

The Inquest was thus ingrafted upon the administration of Justice; and, without any definite law having been passed, it imposed an indirect limitation on the royal authority. Henceforth, when the King was the prosecutor, Twelve Witnesses were required to insure the conviction of the offender; and, whilst Trial by Jury was affording its protection to the life and liberty of the subject, it also became the means by which the demands of the Crown were enforced and ascertained.

Limitations of the royal authority, resulting from the custom of the Inquest Trial.

Alfred is said to have caused a general survey to be made of his dominions by Counties, Hundreds and Tithings, which, being entered upon a roll, was preserved in the Treasury of Winchester[b]. The authority of Ingulphus is very questionable; yet, the work which passes under the name of the Abbot of Croyland appears founded upon more authentic materials; and such "descriptions" had been in use amongst the Romans, and were continued by the Frankish Kings. Chilperic[1] thus caused a new and burdensome survey to be made of his whole kingdom, by which the territorial taxes of Gaul were so much increased, that many of his subjects abandoned their homes and possessions, and fled into other realms. Dangerous rebellions were excited, which were repressed by acts of great severity; but the clamour of the people continued, and their misery increased, until Fredegonda interposed. The Queen pleaded the cause of the people; and, casting into the fire the Cadastre of those domains which had been assigned to her for her dowry, she besought her husband to follow her example; and so earnest were her entreaties, that he yielded, and consigned the records to the flames[c].

Survey of the Kingdom supposed to have been made by Alfred.

"Descriptions" or Territorial registers of the Lower Empire, by which the quota of direct taxes was assessed, continued by the Frankish Kings.

Chilperic directs the formation of a new Cadastre, by which the taxes were much increased, but desists at the request of Fredegonda. A.D. 580.

The formation of "Domesday" had, therefore, a precedent in the archives of the continental States, if not in England; and to these examples we may, perhaps, refer the proceedings which were adopted by William the Conqueror. After much earnest debate and solemn deliberation, it was enacted by the "Witan" at Gloucester, that the King should send his representatives throughout the kingdom, with commissions empowering them to inquire how many hides of land were liable to "Geld" or taxations, in each shire; what land the King himself had, and what

Domesday Book.

Great Council held at Gloucester, A.D. 1085, in which the survey was decreed.

[a] 7 and 8 Geo. IV. c. 28.

[b] Ingulphus.

[c] Greg. Tur. Hist., lib. v. c. 29, 35. Dubos, vol. iv. pp. 342, 346.

Part I. Ch. VIII.

stock upon the land, and what was the annual revenue which he was entitled to receive; how much land his Archbishops had, and his Diocesan Bishops, and his Abbots and his Earls; and what or how much every other man who was settled upon land in England, had either in land or stock, and how much money it was worth. So very narrowly, continues the Saxon Chronicle, did he commission them to search it out, that there was not one single hide, nor a yard of land; nay, moreover, it is shameful to tell, though he thought it no shame to do, not even an ox nor a cow, nor a swine was there left, which was not set down in his records. These are the expressions of the vernacular Chronicle; but it is wholly silent as to the mode pursued; for the survey enacted by the Legislature, and which was to be conclusive of the rights both of the Crown and of the people, was not effected by the mere will and dictation of the Commissioners, but resulted from the sworn declaration of the parties who were to be charged. The Inquests were of two classes: the first, consisted of the Barons, or men of every Hundred, Frenchmen as well as Englishmen, though, of course, the former preponderated greatly in number over the ancient lords of the soil. To these the Sheriff of the County and the Præpositus[1] of the Hundred were added, who, as the King's Officers, were able to watch over his interests and correct the evidence of the landholders. The second class was composed of the Villeinage. Six Ceorls were returned from every Township, who, together with the Parish Priest and the Town Reeve, also made their statements upon oath, to the Royal Commissioners[a]. The information which they gave, when abridged and methodized, constituted the volumes which are yet extant; but, had it not been for the accidental preservation of some fragments of the original Inquests, the process which formed the Record would never have been ascertained. The transcribed volumes were placed, like the Charters and Muniments of the Anglo-Saxon Kings, in the "Hord," or in the Treasury of the Exchequer, where they now remain[b], forming the first of the unrivalled series of territorial records, which enable us to trace the history of landed property in England, from the settlement of the Anglo-Norman Monarchy.

Inquests upon which Domesday was founded.

(See above, p. 117.)

[a] Inquisitio Eliensis, p. 497.

[b] A more particular account of Domesday, and of the other Surveys of a similar nature, will be found in Part II., *Proofs and Illustrations*, pp. 845–858.

The course being established, of resorting to a sworn Inquest or "recognition," for the purpose of ascertaining the rights of the Crown, it was pursued without any deviation of principle, though with many slight variations in form. Thus, when Henry I. wished to claim the rents and services which the men of Winchester were bound to render, as in the days of the Confessor, eighty-six of the best Burgesses were empanelled, and sworn to make the inquiry[a]. If this process was so continued by the Royal Exchequer, there can be little doubt but that it was recommended by its utility. On account of the paucity of written documents, the Crown obtained the information more readily and more accurately by the testimony of the living record, than by any other means. When, therefore, it was necessary to pursue any particular point of inquiry, the truth was investigated by the "Country." Upon the death of the Baron, the Inquisition was taken, ascertaining the lands whence the relief was due, or which devolved to the Crown, during the infancy of the heir. If the domain escheated by the treason of the Tenant, the same formality was observed. Was a franchise sought from the favour of the Crown? the inquest was required to shew whether the Grant would be injurious either to the Sovereign or to the community. Was the right abused? the Inquest was summoned, to prove the warrant or authority by which the privilege was enjoyed. The avowed intent of all these proceedings was unquestionably to promote the profit of the Sovereign; and the Jurymen were called together in aid of the royal authority. But, whenever any number of men are collected and incorporated, possessing a known name, and invested with definite functions, they acquire independence, and may ultimately thwart or rival the power to which they owe their legal existence. From the moment when the Crown became accustomed to resort to the "Inquest," a restraint was imposed upon every branch of the prerogative. The King never could be informed of his rights, but through the medium of the people. Every "extent" by which he claimed the profits and advantages resulting from the casualties of tenure; every process by which he repressed the usurpations of the Baronage, depended upon the "good men and true" who were empanelled to "pass" between the subject and the Sovereign; and the thunder of the Exchequer at Westminster might be silenced by the honesty, the firmness or

Restraints upon the royal authority resulting from the necessity of taking inquisitions "post mortem," "ad quod damnum," &c., before the various branches of the prerogative could be legally exercised.

[a] Liber Winton., p. 531.

Part I. Ch. VIII.

the obstinacy of one sturdy Knight or Yeoman in the distant Shire.

Taxation was controlled in the same manner by the voice of those who were most liable to oppression. Not that there was any popular representation, either in the assembly of the Shire, where the aid or loan was requested from the "Magnates"; or in the general Council of the Realm, from whence a more liberal subsidy was sought. The Prelates and Barons, who assented to the grant in their own proper persons, bound their Tenants, who had neither the power nor the privilege of refusing their compliance. But when the carucage was claimed by the King, it was assessed by a proceeding analogous to that by which Domesday was formed. The Knight, the Clerk and the Sheriff, empowered by the King's Letters Patent, were conjoined to other lawful Knights, elected for the purpose, and probably by the "Communitas" of the Shire. Before these Commissioners, the Barons were summoned; the Lord of each Township or Vill was also required to appear, but the Reeve or Præpositus was allowed to supply his place; and the Four Men, either holding in socage or by villein tenure, accompanied their superior as in the Saxon times. So that, in fact, all the individuals attended who composed the Anglo-Saxon Folkmoot, the imposition of the oath constituting the only material difference in the assembly; and the Two Knights who appear to have represented the military Tenants of each Hundred, had also their prototypes before the Conquest. The individuals thus convened, declared upon their oath the number of ploughlands in cultivation; and according to this Inquest the levy of the carucage was made[a].

Carucage, 8 Ric. I. collected in each Shire by the King's Commissioners & Two Knights, (probably elected by the Communitas), and assessed by the oaths of the Seneschals of the Barons, the Lord of each Township, or his Reeve, Four Men and the Reeve, representing the sworn and virtual Tenants of the Township (being the individuals who composed the Anglo-Saxon Folkmoots, see above, p. 96), and Two Knights, who appear to have represented the military Tenants of each Hundred.

In the earliest instances of taxes charged upon movable property, every individual was sworn as to the amount of his income, Earls and Barons only excepted, who made their declarations by their constant representatives, their Seneschals and Bailiffs[b]. In the subsequent reign, a fifteenth is assessed in the same manner by the Four Knights elected from every Hundred, in the presence of the Justices itinerant; but we may trace the progress of the application of the Jury, in the clause authorizing the Commissioners

Taxes upon personal property. Three stages in the mode of assessment, I. By compelling each individual (Earls and Barons excepted) to swear to the amount of his income. (8 Joh.)

[a] Hoveden, p. 443.

[b] Letters Patent for collecting the aid of twelve pence upon every mark of annual rent, &c., granted in the Council of Oxford. Tested at Northampton, 17th Feb., 8th John. Rot. Pat. m. 3. Fœdera, vol. i. p. 97.

II. By summoning an inquest, if the oath of the party was doubted or disputed. (9 H. III.)
III. By discarding the individual oaths, and empanelling inquests for the Townships or Hundreds. (16 Hen. III. and from that period to the reign of Ed. II.)

to summon an inquest of twelve good and lawful men, in case of any doubt arising respecting the accuracy of the taxations[a]. Somewhat later occurs a remarkable grant of the fortieth of all movable property; and in which the Villeins are stated to have concurred, together with the Earls, Barons, Knights and Freemen of the kingdom. The Knights Assessors were to be chosen as before; but the assessment was to be made by the oaths of the Four Men and the Reeves of the Townships, who were convened for that purpose by the royal commissioners[b]; or, in other words, a Jury was empanelled to adjudge the proportion due to the Sovereign; and this course was not essentially varied, even after the right of granting aids to the Crown was fully acknowledged to be vested in the Parliament of the realm[c]. The people taxed themselves; and the collection of the grants was checked and controlled, and, perhaps, in many instances, evaded by these virtual representatives of the community.

The principle of the Jury was, therefore, not confined to its mere application as a mode of trying contested facts, whether in civil or criminal cases; and both in its form and in its consequences, it had a very material influence upon the general constitution of the realm. In its first and earliest stage, the elements of the Jury existed amongst all the continental nations; and, though the institution was by no means free from defects when considered as the mode of trial between man and man, still, a satisfactory proof of its political excellence will be found in the comparison between the state of England and of those countries wherein the "inquest" was not allowed to expand from its primitive germ. Had it not been for the constant exercise of the functions which the people of England possessed when they assisted in the administration of the law, they would never have

[a] Letters Patent tested at Westminster, 15th Feb. 9 Hen. III. Rot. Pat. p. 2. m. 7.

[b] Commissions tested at Westminster, 28th Sept. 16 Hen. III. Rot. Claus. m. 2.

[c] In the taxation of the thirtieth, 11 Ed. I., an inquest is not expressly mentioned, but implied. The fifth, eighth and ninth, 25 Ed. I., and the fifteenth, 29 Ed. I., were taxed by the oaths of four or two from each Township. The twentieth and thirtieth, 34 Ed. I., by twelve from each Hundred, and four men and the Reeve from each Township. (Parliamentary Writs, vol. i. p. 12, no. 10; p. 54, no. 9; p. 62, no. 42; p. 105, no. 46; p. 179, no. 48.)

been qualified to claim their political rights. When no species of popular suffrage existed; when the bulk of the people had no political existence; when the "Magnates" of the Shire or their Seneschals returned the Knights, and the Knights appeared in Parliament as suppliants before the Council and the King, then, and during the whole of that period of the infancy of liberty, the main spring of the machinery of remedial justice existed in the franchise of the lower and lowest orders of the political hierarchy. Without the suffrage of the Yeoman, the Burgess and the Churl, the Sovereign could not exercise the most important and most essential function of royalty: from them he received the power of life and death; he could not wield the sword of justice until the humblest of his subjects placed the weapon in his hand.

It is a singular and instructive example of the vicissitudes of human affairs, that the best safeguard of a free constitution should have resulted, not from forethought or prospective wisdom, not from the plans of the patriot or the deliberations of the sage, but from the dictates of a Conqueror, anxious only to rivet the yoke upon the people whom he had reduced to vassalage. By introducing the "Law of Normandy," William prepared the way for the revolutions which were destined to subvert the pride and policy of his government; and, when forming that volume which the English nation considered as the most grievous monument of his tyranny, he was establishing the principles which ultimately destroyed the independence of the Crown.

CHAPTER IX.

Judicial authority of the Sovereigns of ancient Nations—Prerogative Jurisdiction of the Anglo-Saxon Kings—The Legal Constitution of England results from the transfer of the authority of the Chief Magistrate to his Justices and Ministers—Pleas of the Crown, according to the Anglo-Saxon Laws—The King's Peace—Judicial Circuits of the Anglo-Saxon Kings—Discontinued by the Conqueror, who, when in England, holds three annual Placita for Wessex, Danelaw, and Mercia—Justiciars, first appointed as Regents, to represent the King during his absence from England—Dispensation of the Law principally entrusted to these Officers—Jurisdiction exercised by the King in person, notwithstanding the creation of Justiciars—Justices in Eyre, how appointed by Henry II. and Richard I.—Judicial Remedial Assemblies, composed of Four Men and the Reeve from the Royal Demesne Towns, convened by King John—Grievances to be redressed by the Verdicts of the Twelve sworn Knights, elected in each Shire pursuant to Magna Charta—Knights elected in the County Courts, pursuant to the Provisions of Oxford, for the purpose of carrying up the Verdicts of the Shires to Parliament, and which Knights obtain their Writs de Expensis like the Members of the House of Commons—Conservancy of the Peace—Conservators of the Peace elected by the Shire—Appointed pursuant to the Ordinances made by the Barons in Simon de Montfort's Parliament—General Conventions for the Conservancy of the Peace—Ordinances of Henry III. for that purpose—Constables—Statute of Winchester, 13 *Ed. I.—Conservators of the Peace directed to return Presentments into Parliament—Reasons for supposing that the Judicial and Remedial Modes of Representation tended to establish the Commons House of Parliament.*

THE principal benefit to be derived from the submission of mankind to civil government is the sure and regular administration of justice; and, therefore, in almost all those ancient nations which were united into one body politic or community,

Part I. Ch. IX.

The Sovereign anciently the Supreme Judge of the State.

the Sovereign was the Supreme Judge of the State. Modern policy has reduced the judicial attributes of the Sovereign to a legal fiction, by effecting a complete separation between his executive and judicial functions, the latter, though exercised in his name, being vested in a distinct order, constituting a permanent Magistracy; but this form of government is comparatively a recent invention. Even when the tribunal was filled by the servants of the altar, the doctrine of the union of sovereignty and judicature was not affected; because, in those cases, the State was really governed by the hierarchy.

Prerogative Jurisdiction of the Anglo-Saxon Monarchs over the tribunals of the Anglo-Saxon States, which were subjected to one Sovereign without being united or incorporated. (See above, pp. 37, 38 and 94.)

(See above, pp. 15, 159.)

Originally uniting the characters of King, of Priest, and of Warrior, the rulers of the Anglo-Saxons seem, from the earliest period of their authentic history, to have possessed a transcendent jurisdiction, which extended to all those cases when the ordinary Courts were inefficient, or the local authorities destitute of energy and vigour. This prerogative authority became the more necessary in proportion as the Dominion of the King, or the Empire of the "Bretwalda" or "Ruler of Britain," became enlarged, and embraced a greater number of communities within its boundaries. The Anglo-Saxon States were united, without being incorporated. The men of Kent and the men of Sussex, though both obeyed the sceptre of Athelstane, were fellow-subjects without being fellow-citizens; and the more jealous each Tribe or Clan would be of preserving its independent existence beneath the paramount authority of the Crown, the more would the public tranquillity demand that the Supreme Magistrate should be invested with the salutary power of regulating and correcting the defects of the popular administrations. Complaints of abuses perpetrated in a popular court, preferred to another popular tribunal, generally lead either to the defeat of the appellant or to the most destructive national dissensions. The sway of a master is less irksome than the preponderance of an equal in rank; and, if the welfare of the Anglo-Saxon Commonwealth required that the suitor of the Burgh or the Shire should obtain relief, in default of justice, the members of the Folkmoot would be less aggrieved by the interposition of the crowned and anointed Monarch, than by the mandates of individuals who were their peers. The utility of admitting of a mediating authority, even though purchased by some sacrifice of individual self-will or liberty, cannot be better exemplified than by adverting to the downfall of the federative states, whether ancient or modern, which have wanted a central point of judicial

Downfall of such federative States as have been destitute of a central jurisdiction,

union. No man ought to be judge in his own cause; and, great as the evil may prove when a Sultan or a Sophi assumes that office, the oppressions of despotism only change their form, without being less vexatious, when the citizen has to combat a tyrant in every one of his equals. Time alone can shew, whether the institutions of the Republics of English America are capable of counteracting the vices and wickedness of democracy; but the political student will be instructed by observing, that, even now, there are symptoms of approaching dissensions between the Supreme Court and the States of the Union; which, if not repressed, must end either by destroying the controlling jurisdiction assigned to the Judges who administer the Federal law; or by investing them with rights approaching to a sovereign prerogative, and hitherto unknown to the Anglo-American constitution. In England, the introduction of lawless despotism, under the guise of discretionary authority, has been effectually prevented by the distribution of power amongst the Sovereign and the hereditary, the appointed and the elected Magistracy; yet all the remedial functions which belong to the Parliament and the various Judges of the Land, have been derived from the Crown; and the history of English law and policy consists in little else than in a demonstration of the manner in which the exercise of power has been transferred from the Sovereign to his Counsellors and to the Courts which bear his name, a process by which the ancient royal prerogatives, arbitrary and indefinite in their nature, have either been coerced by the law, or shared with those who have become the organs of the national influence and authority. Whenever the Crown has been deprived of a prerogative during the revolutionary struggles which compose our annals, royalty, though afterwards restored in appearance to its original state, has never regained its pristine strength, although the Government may have resumed its legitimate course. The flood has always been less than the ebb: and it would be difficult to deny the proposition, that the Crown has always lost in authority by the compacts which have been made between the King and the people. For the rights which the Sovereign has ceded by Charter or Statute, he has never obtained any full equivalent; and even the instruments of monarchical sway have been converted into permanent limitations of the Monarch's power. "Nullum tempus occurrit "Regi" may have been the maxim of the Judge on the Bench; but, whilst the King's right to a fishery or a forest, a marsh or a moor, was guarded with the most jealous care and asserted

correcting and restricting the defects of the popular tribunals. United States of America; conflicts of jurisdiction between the Supreme Court and the State Courts.

Legal Constitution of England resulting, in great measure, from the gradual transfer of the authority of the Chief Magistrate to his Justices, Ministers and Counsellors.

Part I. Ch. IX.

with the utmost vigilance, his most lofty prerogatives have been bestowed, by habit and practice, upon his advisers or his servants, who at first were the mere temporary depositaries of his will, but whose claims have been allowed to become indefeasible against their Sovereign and master.

Let it not be supposed, even for a moment, that such victories are to be stigmatized as usurpations, or deplored as misfortunes. In their consequences, they have proved equally beneficial to the Ruler and to the people. By releasing the Crown from all responsibility, these innovations have given a security to royalty, which is utterly unattainable when the personal acts of the King are presented to the view of the people; and the steady empire of the law has been substituted for an uncertain, and therefore arbitrary, rule. But it still must be confessed, that many of the barriers which now control the royal authority have been erected upon the real and unquestionable ancient domains of the Crown; and, in developing the principles of the Constitution, we must constantly disclose the encroachments of the subject upon the Sovereign. Fortunately, however, for us, a period has arrived in which the origin of our Government may be discussed without the danger of affording any arguments which may tend to unsettle its present principles; nor is it necessary that the theory of the historian should seek support or favour from the prejudices or the predilections of the reader to whom his work is addressed.

Judicial functions of the Anglo-Saxon Monarchs, ordinary and extra-ordinary.

The judicial functions of the Anglo-Saxon Monarchs were of a twofold nature: the ordinary authority, which the King exercised like the inferior territorial Judges, differing perhaps in degree, though the same in kind; and the prerogative supremacy, pervading all the tribunals of the people, and which was to be called into action when they were unable or unwilling to afford redress. The jurisdiction which he exercised over his own Thanes[a] was similar to the authority of any other Hlaford: it resulted from the peculiar and immediate relation of the Vassal to the Superior. Offences committed in the Fyrd or army were punished by the King, in his capacity of Military Commander of the People. He could condemn the criminal, and decree the forfeiture of his property, without the intervention of any other judge or tribunal[b]. Furthermore, the "rights which the King had over "all men," though slightly differing in "Danelage" from the

Pleas of the Crown according to the Anglo-Saxon Law.

[a] Lib. Const. apud Wilkins, p. 118.

[b] Hist. Eliensis, p. 476.

prerogatives which he possessed in Wessex and Mercia, allowed him to take cognizance of almost every offence accompanied by violence and rapine; and amongst these "Pleas of the Crown" we find the terms, so familiar to the Scottish Lawyer and Antiquary, of "Hamsoken"[a] and "Flemen Firth,"[b] or the crimes of invading the peaceful dwelling, and harbouring the outlawed fugitive[c].

The King supplies the defects and moderates the judgments of the popular tribunals.

The sources of ordinary jurisdiction, however extensive, were less important than the powers assigned to the King as the Lord and Leader of his people, and by which he remedied the defects of the legislation of the State, speaking when the law was silent, and adding new vigour to its administration. It was to the royal authority that the suitor had recourse when he could not obtain "Right at home," though this appeal was not to be made, until he had thrice "demanded Right" in the Hundred. If the letter of the law was grievous or burdensome, the alleviation was to be sought only from the King[d]. All these doctrines are to be discerned in the practice of the subsequent ages; in this place it is only necessary to remark, that the principle of law which

Anglo-Saxon principle, that the King was not to be "sought" until justice had failed at home, retained in the "Writ of Right Close," issued "ubi Curia Dominorum proBatur de recto defecisse."[1]

[a] Ham-socn—Domus immunitas, privilegium, libertas[2]—Sepius tamen in veteribus legibus pro ipsâ violatione seu infractione juris accipitur, Lye. [Ham-socn, The immunity, privilege, liberty of one's house. More often, however, in the old laws, the word is used for the violation or infringement of this right.] *Haimsuken*, *Hamesuchen*, or *Hamesoken*, is quhen onie person violentlie, without license, and contrair the King's Peace, enters within ane man's house, or seiks him at the same, or assailzies his house, Skene.

[b] Flymena firmþe—Fugitivorum sustentatio. [The harbouring of fugitives.] The best elucidation of this term is found, not in the uncouth glossary of Skene, but in the Lay of the Border Minstrel:

> "It irks, high Dame, my noble Lords,
> 'Gainst Lady fair to draw their swords;
> But yet they may not tamely see,
> All through the Western Wardenry,
> Your law-contemning kinsmen ride,
> And burn and spoil the Border-side;
> And ill beseems your noble birth
> To make your towers a *Flemen's firth*."
>
> *Lay of the Last Minstrel*, canto IV.

[c] Canute, II. § 14.

[d] Edgar, II. § 2. Canute, II. § 16. Ethelred, § 17.

Part I. Ch. IX.

denied the King's help in civil suits, until an endeavour had first been made to obtain redress in the inferior Courts, became the leading allegation in the "Writ of Right Close"; this prerogative process being founded upon the default of the Lord's Court[a], and issued lest the King should hear any more complaints for want of justice. And the "alleviation of the heavy law," is the primary source of the authority delegated by the King to his Council, and afterwards assumed by his Chancery and Chancellor, and from whence our Courts of Equity are derived.

Equitable jurisdiction, first delegated by the King to his Council, and afterwards assumed by his Chancellor.

Other branches of jurisdiction resulted from the King's character of Supreme Conservator of the Peace throughout the Empire. Thus, the four Great Highways which crossed the island, from east to west, from north to south[b], were placed under his special protection or guardianship; and some of the names borrowed from the primeval mythology of the Teutons, and assigned to these monuments of Roman, or perhaps British, toil, may possibly indicate, that, in heathen days, the sanction of religion was added to the doctrines of the law. Crimes committed upon the "King's Highway," a term which was soon extended to all public roads leading from town to town, were within his immediate jurisdiction, and considered as violations of his supremacy, notwithstanding any franchise enjoyed by the Lord through whose territory the road passed[c].

The King, the Supreme Conservator of the Peace.

The four Roman Roads placed especially under his protection, from whence all highways obtained the name of the King's Highway.

Verge of the King's Palace, within which his "Grith" or peace was to be firmly observed.

The King's presence imparted peace, not only to his residence, but to a considerable district around it. Three miles, three furlongs, and three acre-breadths, nine feet, nine palms, and three barley-corns constituted the mystical radius of the verge, which was reckoned from the town or mansion where the King held his court[d]; and within this ambit the protection afforded by royalty was to remain unviolated. At certain times and holidays also, the King's peace was to be observed throughout the realm. The week of the ceremony of the Coronation constituted one of these privileged periods: they also recurred periodically at the three great festivals of the year, Christmas, Easter and Whitsuntide, being the several seasons when the King wore his crown in the great Councils of the respective

Times and Seasons when the King's peace was to be kept.

[a] Glanville, lib. i. c. 4.

[b] Ikenild Street, Watling Street, the Fosse, and Irmin Street. Part II., *Proofs and Illustrations*, pp. 189–192.

[c] LL. Edwardi, cap. 14. Placitum apud Pennenden.

[d] Anglo-Saxon Customs. Wilkins, p. 63.

Anglo-Saxon States or Kingdoms. Lastly, the King's Peace could be "given" by his word and will, by his "hand," or by his writ, or by his seal; and the punishment of the transgressor was greatly enhanced if he violated the protection thus afforded. In some Shires the breach of the King's Peace, or violation or contempt of the royal authority, increased the mulcts paid by the offender; in others, it placed his life and limbs at the King's mercy, or exposed him to the dread penalty of outlawry; rendering him guilty of a capital crime, which was visited by the extreme rigour of the law[a]. Sometime after the Conquest, all these special protections were disused: but they were replaced by a general proclamation of the "King's Peace," which was made when the community assented to the accession of the new Monarch; and this first proclamation was considered to be in force during the remainder of his life, so as to bring any disturber of the public tranquillity within its penalties. So much importance was attached to the ceremonial act of the proclamation, that, even in the reign of John, offences committed during the interregnum, or period elapsing between the day of the death of the last Monarch, and the recognition of his successor, were unpunishable in those tribunals whose authority was derived from the Crown.

King's Peace, how "given" by his command, his writ, &c.

Custom introduced, after the Conquest, of proclaiming the King's Peace upon his accession, and which continued in force during the whole of his reign.

The manner in which the Sovereign was bound to exercise his judicial functions, may, in some measure, be ascertained by the praise bestowed by the Chroniclers upon those who faithfully fulfilled the most useful of the duties annexed to royalty. Edgar the Pacific became the honour and delight of England. In his time, there was no thief or freebooter. His laws were severe, and he enforced the execution of them in person. Twice in every year, in the winter and in spring, he made the circuit of his dominions, protecting the lowly, rigidly examining the judgments of the powerful in each Province, and avenging all violations of the law[b]. These judicial Eyres, which in the reign of Canute seem to have been regularly held[c], resulted from the political relations of the country. When Egbert became the Bretwalda or Emperor of Britain, the situation of the Anglo-Saxon States

Judicial Circuits of Edgar.

The relations of the States composing the Anglo-Saxon Monarchy,

[a] Domesday, vol. i. Oxenefordscire, p. 154; Wirecistrescire, p. 172; Notingehamscire, p. 280; Evrwicscire, p. 298; Lincolescire, p. 336. Ethelred, p. 117.

[b] Sim. Dunelm. de Gestis, p. 160.

[c] Hist. Ramesiensis, p. 441.

Part I. Ch. IX.

may be compared to England and Scotland after the union of the crowns, and before the union of the Kingdoms, or, perhaps, to the provinces of the Netherlands under Charles Quint. Each separate realm, though acknowledging the same Monarch, preserved its own laws and customs[a], and its own peculiar form of government. Hence, it was requisite that every portion of the Empire should be visited in its turn by the Sovereign, whose authority was to awe the powerful oppressor, and redress the injuries of the humblest of his people.

resembling the relations between England and Scotland, after the union of the crowns, and before the union of the Kingdoms; or, perhaps, to the Netherlands under Charles Quint. (See also above, p. 228.)

These progresses were also facilitated by the nature of the property annexed to the Crown. The most considerable portion of the King's wealth, we may almost say of his subsistence, arose from the rents in kind, due from the tenants who were settled upon his Townships, and which were not, as yet, commuted into money payments. The share of the crops and produce which was allotted to the Royal Land Lord, could not be transported with facility from one part of the kingdom to another. The Sovereign and his retainers were compelled to consume the "Feorm,"[1] on the land which yielded the tribute. Had the royal household continued stationary at the palaces of Kingston and Winchester, the "Thanes" or "Ministers" who surrounded the Throne, or banqueted in the Hall, would have derived but little benefit from the beeves, the sheep, the grain, the ale, or the honey rendered by the Ceorls of the distant Shires; and the interest and convenience of the Sovereign coincided with the task which he had to perform.

The Eyres or progresses of the Anglo-Saxon Kings facilitated by the dispersion of the Royal Demesnes, which afforded stations and resting places, where the followers of the Court could consume the provisions or rents in kind (see above, pp. 23, 53, 126), which were not easily transportable from one part of the kingdom to another.

Upon the conquest of England, the spirit of the administration of justice by the Sovereign did not sustain any immediate change. The dispensation of the law was the office, and had been the praise, of the ancient Dukes of the Northmen. Rollo was the Father of his people; and it was supposed that, merely by uttering his name, the oppressed invoked the assistance of the law[b].

Administration of justice by the Dukes of Normandy.

[a] Will. Malm., de Gestis Regum, lib. ii. c. 2.

[b] *Harau, hareu, haro, harol, harou*: Cri, clameur pour implorer du secours ou réclamer la justice; invocation de nom de Raoul; terme factice pour signifier, allez, allons. Ces mots viennent de *ha*, et de *Raoul*, à cause de Raoul, 1er Duc de Normandie, qui se rendit célèbre et cher à ses sujets par son amour pour la justice et sa sévérité à la rendre, ROQUEFORT. [*Harau, hareu, haro, harol, harou*: Cry, shout to implore help or claim justice; invocation of the name of Raoul; a fancy term to signify, go, let us go; these words come from *ha*, and

William, therefore, was already familiar with the judicial functions appertaining to sovereign power; and those who were least favourable to his memory, allow that he possessed the despot's virtue, of repressing all injustice except his own. Never must we forget, says the Monk of Peterborough, the good peace which he made in the land[a]. According to the old proverb, a man might travel with his bosom full of gold without scath or harm. Lust and violence received the severest punishment. Strict equity dictated his judgments; and, for the purpose of being the better enabled to listen in person to the complaints and redress the wrongs of his subjects, without resorting to the fallacious medium of an interpreter, he endeavoured to learn the English language, an attempt which was defeated by his age, and by the toils and occupations[b] attendant upon the sovereignty of the dominions, united under his sword and sceptre, but divided by the waves.

William the Conqueror causes the laws to be observed.

William seems to have discontinued the judicial Eyres of his predecessors; yet he was accustomed to visit each State of which England, south of the Trent and Humber, was then composed; and his Archbishops and Bishops, Abbots and Earls, Thanes and Knights were assembled by his command on the three great festivals of the year, Easter, Pentecost, and "Midwinter" or Christmas, for the purpose of treating on the wants of the Empire. In these Conventions, which must be considered as Sessions of the supreme remedial tribunal, he appeared, wearing his crown, and arrayed in his royal ornaments: the choice of the stations where the Courts were held, Winchester, Westminster and Gloucester, indicates that the Prelates, Nobles and people of Wessex, of "Danelage," and of Mercia were successively convened before their Sovereign[c]; and a Session, perhaps, may have occasionally been held at York, in the wasted and rebellious Northumbria[d]. Malmesbury describes these Parliaments as having been instituted by William[e]: therefore they must have differed from the great conventions of the Witan, which were not infrequent in Saxon

Judicial Eyres discontinued by William the Conqueror.

Three general Placita held by him every year at the following times and places, viz. Easter, at Winchester for Wessex; Whitsuntide, at Westminster for "Danelage"; Christmas, at Gloucester for Mercia.

Raoul, because of Raoul, the first Duke of Normandy, who made himself famous and dear to his subjects by his love for justice and his severity in its administration.]

[a] Sax. Chron. See also Ord. Vital., p. 506.

[b] Ord. Vital., p. 520.

[c] Sax. Chron. 1067, 1068, 1086, 1087.

[d] Ord. Vital., anno 1069, p. 515. Sax. Chron., same year.

[e] Vita Sancti Wulstani, p. 257.

Part I. Ch. IX.

times; and the rapid extension of the remedial functions possessed by the Curia Regis in the following reigns, held nearly at the times appointed by William, and composed of the same members, may lead to the supposition that he gave greater stability to the powers of judicature therein exercised.

The Conqueror appoints Justiciars or Regents to govern England during his absence, and who administer the law in his stead.

The frequent absence of William from his insular dominions, occasioned another mode of administration, which ultimately produced still greater changes in the law. It was the practice of appointing Justiciars to represent the King's person, to hold his Court, to decide his Pleas, to dispense justice on his behalf, to command the military levies, and to act as Conservators of the Peace in the King's name. No exact parallel to these deputations can be found amongst the Anglo-Saxons. If the Ealdormen or Earls possessed the right of judicature, it resulted from the dignity with which they were invested. They were either mediatized Princes, who had lost their political independence, but who retained a degree of royal power beneath the sway of the Bretwalda or of the King; or potentates, to whom, as in the reign of Canute, a portion of the realm had been granted, with a subordinate authority. If we may use the expression, they enjoyed a real dignity annexed to the land or domain, and not a personal office. But the Justices who were assigned in the name of the Sovereign, and whose powers were revocable at his pleasure, derived their authority merely from their patent; and if we consult the documents of the Anglo-Saxon jurisprudence, we cannot discover any approximation to this practice, except in some very few extraordinary instances in the last age of the Monarchy, when Commissioners were named by the King's Writ to hear a particular cause.

It is a proof of the pre-eminence attached to the administration of justice, as annexed to the Crown, that the Viceroys who supplied the place of the distant Monarch, derived their name from the judicial functions of Royalty; and the ancient title of "Lords Justices" has continued to be the proper and constitutional term for the members of a Regency unto the present day. Odo, Bishop of Bayeux, the half-brother of the Conqueror, and William Fitz-Osbern[a], were first appointed to this high office, which continued nearly upon its ancient scheme until the reign of Henry III. So long as the Justiciar was invested with the

Odo, Bishop of Bayeux, the half-brother of the Conqueror, and William Fitz-Osbern first appointed to this office, 1067.

[a] Ordericus Vitalis. Hen. Hunt. lib. vii. p. 213. Will. Malm., de Gestis Regum, lib. iii. 6.

delegated functions of Royalty, he was the guardian of the land, the keeper of the peace of the kingdom; and for these purposes all were to aid his endeavours, and obey his commands[a].

Appointment of Justiciars to discharge the judicial functions of the Sovereign.

In the reigns subsequent to the Conquest, the decline of the ancient local courts, added to the increasing complexity and refinement of the law, would probably tend to enhance the importance and utility of the office; and hence we are probably to date a further alteration in the arrangement of the authority imparted to the King's Justiciars. Some of these Judges were usually deputed for the purpose of relieving the King from the burden of his judicial functions; and the urgent affairs which compelled Henry II. to divide his time between England and his Continental possessions are noticed as the particular causes which compelled him to appoint these his Lieutenants, over whom he nevertheless exercised a constant inspection and control[b]. But the number as well as the variety of names of the Justices appearing in the early Chirographs of "Concords," leave reason for doubting, whether, anterior to the reign of Henry III., a Court, whose members were changing almost at every Session, can be said to have been permanently constituted. It seems more probable that the individuals who composed the tribunal were selected as suited the pleasure of the Sovereign and the convenience of the Clerks and Barons; and the history of our legal administration will be much simplified, if we consider all those Courts which were afterwards denominated the Exchequer, the King's Bench, the Common Pleas and the Chancery, as being originally Committees, selected by the King when occasion required out of a larger body, for the despatch of peculiar branches of business, and which Committees by degrees assumed an independent and permanent existence. Even after the accession of Edward I., when the two Benches of Justices respectively assigned for "Common Pleas" and for "Pleas before the King" were regularly settled and constituted, it was not only the theory but the practice of the law to consider them merely as the representatives or assistants of the Sovereign. All the Justices of the King's Courts were instituted[c] because he

Such Justices appointed to aid the King; who might nevertheless resume any portion of his judicial functions when he thought proper; the doctrine "that the King cannot determine any cause but by the

[a] Commission appointing Peter de Rupibus, Bishop of Winchester, tested at Portsmouth 1 Feb. 15 John. Rot. Pat. 15 Joh. m. 3.

[b] Narrative of the suit between Gilbert de Balliol and the Monks of Battle, temp. Hen. II. Chron. of Battle; MS. Cott. Domitian A ii. See Part II., *Proofs and Illustrations*, pp. 4, 96–106.

[c] Bracton, lib. iii. De Actionibus, cap. x. § 1. Britton, c. i.

Part I. Ch. IX.

could not suffice to hear and determine the complaints of the people. They were appointed to relieve him in a task which one individual was unable to perform. Nor did the King, by any such nominations, so far depart with his authority as Supreme Judge of his people, but that he might, whenever he thought fit, resume that character and exercise those functions, which were neither forgotten nor lost by the confidence which he had reposed in his judicial ministers. When John passed sentence upon the malefactors in the presence of Pandulphus[1], although he sought to intimidate the Legate, yet the act itself was a part of his royal duty: and the exercise of criminal jurisdiction by the Monarch gives rise to no comment and excites no blame[a]. The frequent grant of the privilege which imported that the party was not to be impleaded except before the King or before his Justiciar, shews that the Sovereign and his deputy were equally contemplated in practice; and the doctrine that a plea which concerned the King could only be heard by him in person, would frequently call this royal judicature into action[b]. Henry III. exercised the severest justice against the citizens of Winchester, without needing the aid of Prelate or Baron. He threatened to assemble "all the Counties "of England to convict them as traitors." When the first inquest empanelled before him concealed the truth, he ordered, by word of mouth, that the Jurors should be cast into prison, and by a summary verbal mandate another array was summoned, according to whose verdict the offenders were executed. Nor were the Judicial Iters of the Sovereigns, in which they exercised all the functions committed at other times to the Justices in Eyre, entirely discontinued until the accession of Edward III.[c], under

mouth of his Judges, to whom he has committed the whole of his judicial authority" (4 Inst. 73), not being then recognized.

Examples of criminal jurisdiction exercised in person by John, Hen. III., Ed. I., and Ed. II.

[a] Ann. Burton, p. 266.

[b] Placita de Quo War., 23 Hen. III. Madox, Exch., p. 70.

[c] Breve de Venire fac. xii. Milites, &c. coram Rege apud Wigorniam in primo adventu suo; Magn. Rot. 6 Joh. Fines et amerciamenta de itinere Regis; Magn. Rot. 10 Joh. Breve de audiendo appello coram Rege in proximo adventu ejus apud Norhamptone; Magn. Rot. 12 Joh. De amerciamentis et finibus de Assisis novæ dissaisinæ captis coram Rege itinerando versus Bromholm; Magn. Rot. 22 Hen. III. Assisæ novæ disseisinæ captæ coram Rege in itinere suo versus Scociam; anno regni Regis Henrici, fil. Regis Johannis, xxviii. Placita coram domino Rege apud Acton Burnell, 11 Ed. I. [Writ to cause twelve knights to come before the King at Worcester immediately on his arrival, Great Roll, 6 Joh. Fines and amerciaments on the King's journey, Great Roll, 10 Joh. Writ concerning the hearing of an appeal before

whose reign a new form was given to the legal constitution. Still the exercise of ordinary justice by the Sovereign was an exception to the rules which had been established for his ease and convenience; and in those tribunals which proceeded according to the usual course of the common law, it was only on rare and important occasions that the people beheld their King in the stead of the ermined sages, in whose breasts were deposited the secrets and mysteries of jurisprudence. But, in his own high Court[a], his Council, or his Parliament, the presence of the Sovereign was almost constantly given; and the jurisdiction emanating from his person, and which was to aid the tardy or inefficient process entrusted to the subordinate Judges of the land, or to amend the errors into which they had fallen, was at all times guided by his discretion and regulated by his commands.

Justices Itinerant, not permanently introduced into the system of legal administration until the reign of Henry II.

Justices Itinerant, who, despatched throughout the land, decided the "Pleas of the Crown," may be obscurely traced in the reign of the Conqueror; not, perhaps, appointed with much regularity, but despatched upon peculiar occasions and emergencies. Functionaries bearing the name of Justices, and who assessed the tallages upon the King's Demesnes, probably made their circuits with more regularity. The Commissioners who took the Domesday inquests, were "Justices," and are so called by the contemporary historians. But the institution by which Henry II. attempted, as the chroniclers emphatically inform us, to restore peace to his people, after the "shipwreck" of the kingdom[b], although not entirely unprecedented in England, had a more extended application and a more permanent effect in restoring obedience to the law, and in perfecting the administration of remedial justice, than any form of policy which had been before adopted in the realm.

"Barones Errantes," how assigned by Hen. II. on his return from Normandy, 1170.

I do not know whether, under this head, we may rank the transactions which took place on the return of Henry II. from

the King, immediately on his arrival at Northampton, Great Roll, 12 Joh. Of the amerciaments and fines from the Assizes of Novel Disseisin taken before the King on his journey towards Bromholm, Great Roll, 22 Hen. III. The Assizes of Novel Disseisin taken before the King on his journey towards Scotland: in the twenty-eighth year of the reign of King Henry, son of King John. Pleas before our lord the King at Acton Burnell, 11 Ed. I.]

[a] Dialogus de Scaccario, lib. i. c. 4.

[b] Dialogus de Scaccario, lib. ii. c. 2.

Part I. Ch. IX.

Normandy, and which are described by the Chroniclers of the age as being very remarkable and memorable. Great oppressions had been committed in the kingdom during the absence of the Sovereign. In order to remedy these abuses, the King, by the advice of his "Optimates," nominated certain persons, designated as "Barones Errantes,"[a] who made their circuits through the Kingdom, with the most ample powers. All Sheriffs and their subordinate Officers or "Ministers," were to give pledges to appear before the King at a certain day, to do right, and to make amends at the suit of those whom they had injured. Each County was to be convened, and an oath was to be administered to all the Barons, Knights and Freemen, and to all the Citizens and Burgesses, that they would say the truth concerning all that should be required of them on behalf of the King, and that they would not conceal the truth for love or hatred, favour or affection, gift or reward. This, it will be observed, is the usual Grand Inquest oath; and the difficulty of examining the whole population may suggest a doubt whether the expression of Gervase of Canterbury is to be construed literally, so as to exclude the more reasonable supposition, that the verdicts were given, as was usually the case upon similar occasions, by the selected members who were empanelled on behalf of the community which they represented.

Empowered to make "inquiry" by oath or inquest.

In order to obtain the verdicts before the Justices Itinerant, it was usual to exhibit chapters of inquiry adapted to the objects of the Eyre; and in this instance the first article related to the unjust exactions of the Sheriffs and their Bailiffs, whose situations gave them great powers of extortion. Their conduct was to be most strictly investigated; and the amount of the money which they had unduly levied upon the Hundreds or Townships since the King had passed into Normandy, and whereby the land or the tenants thereof were injured, was to be ascertained. Another article related to indictments under the "Assize" of Clarendon; and the Jurors were to declare, whether the innocent had been accused without cause, or the guilty allowed to escape without punishment. An inquiry was to be made, which appears

Articles of inquiry.

[a] The Barones Errantes for the Home Circuit, or the Counties of Kent, Surrey, Middlesex, Oxford, Berks, Bucks and Bedford were the Abbots of St. Austin and of Chertsey, the Earl of Clare, Willielmus de Abrancis, Manassier de Dammartin, Geroldus fil. Radulphi, Gilebertus de Pinkeni, Willielmus filius Heltonis, Willielmus fil. Nigelli, Wills. fil. Martini, Radulphus de Hospitali, Radulphus de Dene.

extended to the whole body of land-holders, and the Justices were to be informed of what they had taken from their tenants by lawful judgment, or without judgment. The sums unduly exacted by the Archdeacons and Deans of each diocese were to be presented; and a return was to be made of the names of all those who had omitted or refused to do homage to the King. In pursuance of these commissions and of the King's command, the Convention took place at London; the Bishops, Abbots, Earls, and Barons throughout England, the Sheriffs, the "Præpositi," the Aldermen, with their pledges, all attended, greatly appalled; each fearing the accusation of his conscience, and unable to anticipate the intentions of the Sovereign. To the surprise of the assembly, he caused his son to be anointed and crowned as King. On the following day, the King of Scotland, David his brother, the Earls and Barons, and all the "Freeholders" of the kingdom, did their homage to the new Monarch, who was associated to his father in the functions of royalty. Almost all the Sheriffs of England were amoved from their offices[a]. The other delinquents, however, escaped; and even the obnoxious "Ministers," after a short time had elapsed, were restored to their offices, though not without payment of heavy fines.

Convention at London, 14 June, 1170.

This singular assembly, which had evidently some connexion with the recognition of the young Prince as the heir to the monarchy, is not described with sufficient clearness by the annalists. It is evident, however, that the Justices Itinerant were merely empowered to take the inquests; they could inquire, but they could not determine: judgment was reserved to the King; and therefore offenders were attached to appear in person at the bar of his tribunal. Such a proceeding, however, was oppressive without being effectual; and the division of the kingdom into six Circuits, established by the Great Council at Northampton, afforded a more convenient legislation and a more efficient machinery[b]. Three Justices were appointed in each Circuit, to whom the fulfilment of the "Assizes" was entrusted. They were authorized to pass sentence upon the offenders convicted before them, at the same time that they were invested with the most ample powers for the preservation of the public tranquillity. The proceedings are strikingly similar to the course indicated by the Capitularies; and though the Circuits of the

Justices Itinerant appointed by Henry II. in the Great Council at Northampton, 1176 (see above, p. 221), England being divided into six Circuits.

[a] Benedictus Abbas, p. 34. Gervasius Dorobernensis, pp. 1410–12.

[b] Benedictus Abbas, p. 131.

Part I. Ch. IX.

"Missi" had been so long intermitted in France, that they could be only known to the antiquary, it might almost be imagined that Henry II. had attempted to imitate the example afforded by the restorer of the Empire of the West.

Four Circuits appointed in the Council at Windsor, 1179.

Another similar appointment was made in the Great Council held at Windsor. Henry, having convened his "Bishops, Earls, "and Proceres" before himself and his son, by their advice he divided England into four parts, and over each part he assigned the wise men of his Kingdom, who were to administer justice to the people[a]. In the three southern Circuits, five Justices were nominated; and it may be observed that each Commission contained a Bishop and one or more of the King's "Clerks." For England north of Trent and Humber[b], which constituted the fourth Circuit, six of these Justices were assigned, who are specially designated as "the Justices of the Curia Regis, appointed "to hear the complaints of the people"; terms which imply that they possessed a more ample power than the other Commissioners, whose authority, perhaps, did not extend to certain weighty cases which were specially reserved to the King. The distance of the Northern Counties from the usual seat of government, rendered this arrangement a benefit to the people; but it is to be considered as involving a more important principle than mere convenience, and as a reminiscence of the political separation of the kingdom of Northumbria from the rest of England, which, in some respects, continued until the fourteenth century.

Six Justices appointed in the Northern Counties, designated as "Justiciarii in Curia Regis constituti ad audiendum clamores populi."

Ancient separation of Northumbria from the rest of England still indicated in the reign of Edward I. by the convention of two Parliaments or Great Councils, 11 Ed. I., simultaneously assembled at York for the Northern Counties, and at Northampton for the Southern Counties.

Soon after the return of Richard from the Holy Land, he despatched, as his father had done, the Justices Itinerant, whose instructions for proceeding in the "Pleas of the Crown" have been before noticed. They were also empowered to cause three Knights and one Clerk to be elected in each County, as "Keepers of the Pleas of the Crown." Whether any such election ever took place before does not appear; but these officers, who were afterwards called "Coroners," were equally the representatives of the people and the officers of the King; for, whilst they were chosen by the "Communities" of the Shire in full County Court assembled,

Justices Itinerant appointed by Richard Cœur de Lion, on his return from the Holy Land, A.D. 1194. (See above, p. 212.)

"Custodes Placitorum Coronæ," afterwards called Coroners, elected in each Shire, who united the characters of representatives of the people and of officers of the King.

[a] Benedictus Abbas, p. 317.

[b] Or nearly so, the following being the Counties to which the Six Justices were assigned:—Nottinghamshire, Derbyshire, Yorkshire, Northumberland, Cumberland, Westmorland, Lancaster and the land between Ribble and Mersey, which seems to have been considered as a distinct shire.

they were the constant and active Conservators of the King's Peace, the guardians of the rights of the Sovereign and of the franchises of his Crown[a]. Whenever any transgression had been committed of which the King's Court could take cognizance, the "Custos Placitorum Coronæ" forthwith repaired to the spot, and, upon "inquiry" made by the Jurors of the Townships, the offenders were committed to prison to abide their deliverance; or, in other words, the authority which the Coroner now exercises upon peculiar occasions, was the regular and usual mode by which the criminal was made amenable to the law.

Coroners, Conservators of the Peace.

It will be recollected, that, though the Justices in Eyre received their commission from the Crown, still their jurisdiction was exercised by means of the Jurors of the Hundreds, the successors of the older Echevins, and by the four men and the Reeve, the Anglo-Saxon Representatives of the Townships, who, assembled before the Deputies of the Sovereign, when they presided in the Shire, presented or made known the grievances of the community. When a general remedial Court began to be needed, the difficulty of causing such numerous bodies to come from the different parts of the Kingdom, was probably the principal if not the only reason why the same course was not pursued. An Assembly which was easily congregated within the narrow boundaries of the Isle of Man could not be brought together in England; deputations of greater or lesser number would be naturally adopted in their stead; and thus, the Twelve sworn Echevins from each Shire, when convened under the Conqueror, were substituted for the Thanes of every Wapentake or Hundred, according to the older law.

Representatives of the Hundreds and Townships before the Justices in Eyre (see above, pp. 95 96 and 210).

(See above, pp. 79 and 103, 104.)

(See above, pp. 96, 97.)

In the reign of John, however, a general assembly of this description, nearly on the plan of the Shire Court, was held; and a legislative enactment for the whole Kingdom appears to have been grounded upon its proceedings. John, when absolved from the interdict by the Papal Legate, swore that he would protect and defend the rights of Holy Church. All the good laws of his predecessors, and in particular the laws of Edward the Confessor, he would restore; and he would abolish all bad usages. On the following day, writs were issued to all the Sheriffs of England, commanding them to cause "Four good men and the Reeve" from every one of his "Demesne Towns," to appear at St. Albans, in order that inquests might thereby

Four good men and the Reeve, returned from every one of the King's Demesne Towns, and assembled at St. Albans "pridie nonas Augusti," 15 Joh. i.e. 4 Aug., 1213.

[a] Hoveden, p. 795. Britton, c. 1.

Part I. Ch. IX.

be taken of the injuries sustained by the Ecclesiastics, and of the amount of the damages which he owed to them[a]. Geoffrey Fitz-Peter and the Bishop of Winchester, the Justiciars to whom the King had committed the government of the Kingdom, presided in the Council of Prelates and Magnates, before which these Good Men and Præpositi were called. By them, the Peace was proclaimed; the Sheriffs, the Foresters, and others of the King's Ministers, were commanded to abstain from their extortions under forfeiture of life and limb; and on the part of the King it was declared, that the laws of Henry I., which professed to be a confirmation of the laws of the Confessor, should be kept and observed, and all "iniquitous laws" from thenceforth be utterly abolished and annulled.

The King's Peace proclaimed.

Ordinance made by the Justiciars, Prelates and Magnates, that the laws of Henry I. should be kept, and all bad laws utterly abolished, &c.

Matthew Paris describes the "Four men and the Reeve" as being returned only for the purpose of answering those points of inquiry which related to the clergy, and which were of the greatest importance in his eyes; but the extensive nature of the relief resulting from the Council, may induce the opinion that the authority of these Representatives was more enlarged, and that, instead of confining themselves to a presentment of the spoliations sustained by the Church, their inquests related to the general grievances of the kingdom.

Convention composed of certain Knights (who had been specially summoned), of the "body of the Baronage," and four discreet Knights of the Shire, to speak with the King; 15 Joh. 1213.

After a short interval, we find another assembly held, pursuant to writs[b] which required the Sheriff to cause all the Knights of his bailliwick, who, as it is therein stated, had been previously summoned to Oxford, to appear before the King with their arms, together with the "body of the Baronage," but unarmed, and "Four discreet Knights" of the Shire, to speak with the King concerning the affairs of the kingdom. It has been, however, conjectured[c], that these four Knights of the County were, like the "Four men" and the "Præpositi" of the Demesne Towns, returned by the Sheriff in the nature of Jurymen; but nothing further is known of the transaction: we can only describe the proceeding as it appears on the Record, and as an indication of the various conformations of these remedial assemblies, which, without any strict adherence to any settled scheme, were called together when required, for the welfare of the Commonwealth.

[a] Matt. Paris, p. 239.

[b] Tested 15 Nov., 15 Joh. Rot. Claus., p. 2, m. 7. Fœdera, vol. i. p. 117.

[c] By Prynne. See Hallam, Middle Ages, c. 8. part 3.

Notwithstanding these discrepancies, we can discern, however, that, as far as any consistent principles existed in the policy of a turbulent people and a discontented state, the ancient constitution was worked by two classes of functionaries, established for the preservation of the public tranquillity: a certain number of high Officers, bearing various names, some in the Geldable of the Shire, others within the King's own Forest ground, and possessing the executive functions, the power of the sword, who were nominated by the "Communitas"; and a Body of virtual Representatives, who, upon their oaths, presented or made known the grievances of the people. Without any declared theory of government, it was, in practice, divided between the Sovereign and the Nation; yet, notwithstanding these elements of popular authority, no proceeding of importance could be established, confirmed, or perfected without the concurrence of the Sovereign. The Conservator of the Peace, though chosen by the landholders, was finally appointed to his office by the royal writ or commission; whilst the verdict of the Jury required the sanction of the Monarch before it obtained a legal sanction or validity. Thus, it was one of the provisions of Magna Charta, that all the bad customs of the Forests and the Warrens, of the Foresters and Warreners, of the Sheriffs, and other officers or Ministers of the Crown, should be "inquired" in every Shire, by twelve sworn Knights of the same Shire, to be chosen by the "probi homines" thereof, and that, within forty days after the taking of the inquisition, they should be utterly abolished by the Knights, and never renewed: and by Writs[a] sealed upon the field of Runnymede, the Sheriffs were directed to make such elections at the next County Court, the inquisitions to be taken agreeably to the tenour of the Charter. But it was at the same time provided, that the King, or his Justiciars, in case he should be absent from England, should be first informed of the result of these verdicts, or, in the legal phrase, that the inquests were to be returned before him. In consequence of this stipulation, a solemn instrument was executed by the Prelates[b], declaring that the article was understood on either part, by the King and by the Barons, not to extend to those customs which were essential

Two classes of functionaries established by the ancient constitution for the preservation of the public tranquillity. The Executive, who, under the names of Coroners, Conservators of the Peace, Verderers, &c. were the King's Officers, elected by the "Communitas"; and the Inquisitorial, selected from the people, who "presented" or made known the grievances of the State by their verdicts upon oath: but the Conservator of the Peace was confirmed by the King, and the verdicts of the Juries required the assent or judgment of the Crown before they could be acted upon.

Magna Charta provides that all bad customs, &c. are to be inquired into by twelve sworn Knights of each County, to be chosen by the "probi homines" thereof.

Writs issued accordingly, 17 Joh. 1215.

Inquests taken accordingly.

[a] Tested 19 June, 17 Joh. Rot. Pat. m. 23. Fœdera, vol. i. p. 134.

[b] Letters Patent under the seals of Stephen Langton, Archbishop of Canterbury, the Archbishop of Dublin, and the Bishops of London, Winchester, Bath, Lincoln, Worcester, and Coventry and Lichfield. Rot. Claus., 17 John. Fœdera, vol. i. p. 134.

Part I. Ch. IX.

to the government of the Forests. So that whatever may have been the judgment of the twelve sworn Knights, it was of no avail until examined and ratified by the King.

Ratification of the Great Charter demanded of Henry III. by the Barons, in the "Colloquium" held at London in eight days of the Epiphany, 1223.

This course is more distinctly pointed out by the transactions which took place when Henry III. renewed the Great Charter[a]. The King, meeting his Barons in Parliament at London, was required by Stephen Langton and the "Magnates" to confirm those liberties and franchises for which they had warred against his father. Henry could not refuse his consent, though opposed by William Briwere, who held a distinguished rank in his councils. "These liberties which ye ask," said the latter, addressing himself to the Archbishop, "extorted by force, ought not to be "observed according to law." An angry reply ensued; but the King pacified the disputants; and, immediately deliberating with his council, writs were transmitted to all the Sheriffs of England, commanding them to make inquiry by the oaths of twelve of the most lawful and discreet Knights of the County, by whom the truth might be best known, of all the customs and liberties which belonged to King John, his father, in the day when the war began between him and the Barons. These "customs" were to be held as lawful customs, and the inquests and the names of the "Inquisitors" were to be returned before the King on the morrow of the Clause of Easter, the time when that Great Council, or Curia Regis, which afterwards merged in the High Court of "Parliament," was to hold its Session according to the ancient usage of the kingdom.

Hen. III. agrees that the evil customs, &c. should be inquired into by Twelve sworn Knights in each Shire, the verdicts to be returned before him on the morrow of the Clause of Easter, (being the time when the Curia Regis usually assembled.)

Provisions of Oxford, 1258, by which it was ordained that four Knights should be elected in every County, who should make inquiry by the Jurors of the Hundreds of all grievances occasioned by the oppressions of Sheriffs, &c.

In the proceedings which have hitherto been noticed, the custom of redressing the wrongs of the people by means of the Inquisition of the Shire does not bear any permanent relation to the supreme judicial assembly. The project of a constitution, intended to afford a more constant mode of transmitting the complaints of the people to a central and supreme tribunal, destined to become the Grand Inquest for the entire community, seems to be due to the memorable Parliament of Oxford, when those celebrated "Provisions" were enacted, which transferred the most important powers of Government to a body of "Redesmen" or Counsellors, some named by the King, others by the Earls and Barons on behalf of the "Communitas."[b] By the first article

[a] Matt. Paris, p. 317. Fœdera, vol. i. p. 168.

[b] Annales Monast. Burton, p. 412. The import of "Communitas," as here employed, has been much contested; but we have the benefit

of the Ordinances, it was enacted, that four good and lawful Knights should be elected in every County, who should inquire of all transgressions and oppressions to which the people had been subjected, in order that, the truth being known, the same might be the better amended and reformed. This "inquiry" was to be made by the verdict of the Juries of the Shire, "as well Knights as others," and no individual summoned or returned for this purpose, was to be exempted from a duty so important to the Realm. Amongst other clauses restraining the prerogatives of the Crown, it was ordained, that three "Parliaments" should be held in every year: on the octave of St. Michael, on the morrow of the Purification, and on the first day of June. In these Parliaments, the elected Counsellors of the King were to assemble, whether summoned or not, to consider the state of the Country, and also to treat on the affairs of the kingdom, when required by the King. "Be it remembered," the Ordinance then continues, "that the *Commune* shall elect Twelve good men, who shall "come to Parliament when needed, and when the King or his "Council shall command, in order to treat of the affairs of the "King and kingdom, and this shall be done to spare the costs "of the Commonalty." The true intent of this stipulation has occasioned many conjectures; but it is probable that it is rendered less intelligible by the loss of other concurrent instruments, which, if preserved, would have elucidated the text of the compact, of which no authentic record subsists, it having been preserved only in a monastic chronicle. As recited, it contains no direction that the individuals delegated to take the inquests should appear in the Parliaments provided to be held three times in each year; yet the intention of the Legislature is interpreted by the King's letters patent[a], issued in obedience to the Ordinances, and which also command the elected Knights to appear in person at Westminster on the octave of St. Michael, for the purpose of delivering the inquisitions to the Council or Parliament. Such attendance was given; and the Knights who came to Westminster severally obtained writs[b], addressed to the Sheriffs, enjoining the levy of their "reasonable expenses" incurred in going and returning to

Three "Parliaments" to be held in every year, on the octave of St. Michael, the morrow of the Purification, and the first day of June.

42 Henry III. 1258. Letters Patent issued pursuant to the Ordinance, directing the election of the Knights, and commanding them to appear in person at Westminster, for the purpose of delivering the inquisitions to the Council or Parliament.

43 Henry III. 1258. Knights thus elected obtain their writs "de expensis" nearly in the form afterwards adopted for the Knights of the Shire.

of a coeval and *official* translation. It is rendered by "loandesfolk" in the Charter tested at London 18 Oct., 42 Hen. III. Rot. Pat. 43 Hen. III. m. 15.

[a] Tested at Westm. 4 Aug., 42 Hen. III. Rot. Pat. de eodem anno, m. 3.

[b] Tested at Westm. 4 Nov., 43 Hen. III. Rot. Claus. 42 Hen. III. m. 1.

Part I. Ch. IX.

and from the Parliament at Westminster, "on certain affairs "concerning the Commonalty of all the County," nearly in the form which, when the Commons House of Parliament was fully established, became in use for the Knights of the Shire; and according to the practice stated to have been "accustomed and used" in the first writs for the expenses of the Commons, now extant upon the roll.

Conservancy of the King's Peace.

We must return to the "Conservancy of the King's Peace," the organization adopted for the preservation of the tranquillity of the Country. Originating out of the Anglo-Saxon Watch and Ward, as renewed and enforced by the Conqueror, this Militia, disciplined by the Conservators, was gradually improved into an effective system of police, and engrafted upon the political constitution of the Realm. When the military array of the Shire for the purpose of internal defence was held pursuant to the King's command, all the Knights and Freeholders were bound to attend in person. Each Burgh answered by twelve Burgesses: and the four men and the Reeve, the invariable representatives of the Anglo-Saxon Townships, appeared for the villeinage of their respective communities[a]. Convened for military purposes, these musters were composed of the members who attended the judicial assemblies of the Shire; for the military and civil policy of the ancient nations were combined, the Army being only another name for the State or Commonwealth. The various improvements in the art of war, in the period intervening between the Conquest and the reign of Henry II., had probably occasioned the first enactment of "the Assize of Arms." From the Norman, the English Ceorl had learned to bend the bow and direct the arrow; the less expert of the rustic levy wielded the gisarme[1], brown with rust, the bill and the scythe; the burgess appeared arrayed in his wambace[2] and poising his lance; and the tenants of freehold land, marshalled according to their revenues, displayed the helm and the hawberk; those of the highest amount and value only being mounted on their steeds[b]. Some portions of these

Conventions held for that purpose, consisting of the Knights and Freeholders, who were bound to attend in person, of Twelve Burgesses for every Burgh, and Four Men and the Reeve for every Township.

Array of the Shire, in which each man was armed according to his degree.

[a] Writs docketed "de provisione facta ad pacem Regis conservandam" [concerning the provision made for keeping the King's peace], tested at Portsmouth 20 July, 37 Hen. III. Rot. Claus., m. 7. Fœdera, vol. i. p. 291.

[b] Assisa Regis Henrici II. de habendis armis in Anglia, A.D. 1181 [Assize of King Henry II. concerning the provision of arms in England], Benedictus Abbas, p. 365. The bow is first mentioned in the writ of Hen. III.

forces were bound more peculiarly by reason of their tenures; such were the "Red Spears" of the North, whose service was charged upon the land which they held[a], and the right or duty of bearing the pennoncel before the Hundred, might devolve upon the owner of a peculiar tenement[b]; but by far the greater part of the members of the "Fyrd," were called out by the general duty imposed upon all the lieges of defending the King's Peace, and thus insuring obedience to the law. The Hundreds were commanded by the Chief "Constables," who appear, under this foreign title, as leaders of the military levies early in the reign of John[c], and who are directed to enforce the peace in the "Provisions" enacted by Henry III. Other constables were to be constituted in the Townships, before whom the Resiants were to be sworn to arms, a duty, which, in the Cities and Burghs, was assigned to the municipal officers, the Mayor and Bailiffs. In process of time, the constabulary force appears to replace much of the Anglo-Saxon Decennary system, but the alteration was probably more in name than in substance: the individual elected as the Anglo-Saxon Tithing-man, or the Borges-ealdor, also performed the duties prescribed by the Anglo-Norman Sovereigns; and the presentment or election of this officer, now of such mean estate, by the Leet Jury of a Township, recalls the ancient election of the Adalides and Almocadenes of the Castilian armies.

Service by Tenure, "Red Spears" of the North.

Service resulting from allegiance.

37 Henry III. 1253. Ordinance for the Conservancy of the Peace enacted by Hen. III. Constables to be elected in every Hundred, before whom the Resiants were to be sworn to arms.

At common law, the Sheriff was entrusted with the powers by which the King's Peace was to be preserved, a function which may be obscurely traced as far back as the reign of Athelstane; but in the ordinances of Henry III., we find the first appearance of the military "Conservator of the Peace," who, according to the ordinary course, appears to have been elected or nominated by the "Communitas" of the Shire, as the "Heretochs" of the Anglo-Saxons are said to have been, and who, after such nomination, was accepted by the King, and empowered by the Royal writ or commission[d]. The choice usually fell upon the most influential landholders of the Shire; and if it appeared that the Conservator

Military Conservators of the Peace (see above, p. 164) elected by the Communitas of the Shire, and afterwards empowered by the King's commission; required to possess a qualification of land, in default of which they might be removed from their office.

[a] Hutchinson, Cumberland, vol. i. p. 520.

[b] Placita Coronæ de Comitatu Oxoniæ, 24 Hen. III. m. 4. [Pleas of the Crown for the County of Oxford, 24 Hen. III. fourth membrane.]

[c] Magn. Rot. 3 John. Madox, Exch., p. 27.

[d] Rot. Pat. 5 Ed. I. m. 13. Parl. Writs, vol. i. pp. 389, 390, nos. 24 and 25.

Part I. Ch. IX.

did not possess the requisite qualifications, he might be removed from his office, and another appointed in his stead. Representing the property of the Shire, the Conservator was answerable for the public tranquillity, and an ample authority was entrusted to him. All robbers and malefactors were to be arrested at his behest; when needed, he raised the "Posse Comitatus," and followed the offenders with hue and cry from Hundred to Hundred: he was also charged with the array of the County, and he enforced the due performance of Watch and Ward; and when it became necessary either to deliver his commands or to require the concurrence of the community, the business, as before observed, was transacted in the usual constitutional County meeting of the Knights, the Freeholders, the Four Men of the Townships, and the Twelve lawful Burgesses of each Burgh. But the Conservator had no judicial authority, nor could he summon a Jury; the Knights or Good Men composing the Inquests were summoned before him by the Sheriff, and the criminals whom the sworn witnesses or Jurors accused, were committed to prison until delivered according to due course of law; for all power of judgment remained in the Crown, and was exercised by the Justices, who tried the offenders whom the Conservator had apprehended. By an Ordinance made while Henry III. was a captive in the power of Simon de Montfort, it was directed that Keepers of the Peace should be appointed in every County of the realm, until it should be otherwise provided by the Barons and the King[a]. These Special Conservators are stated to be assigned by the advice of the Barons; a phrase which, however, does not necessarily exclude the previous nomination of the community. Leaving, however, this question undetermined, we find that the Commission, besides the powers appropriate to the office, contains a further clause, noticing the then instant Parliament, and enjoining the Custos "to send four good "and discreet Knights of the County, for that purpose elected by "assent of the County, to be at London in eight days of the Holy "Trinity, to treat with the King, his Prelates, and Magnates upon "the urgent affairs of the kingdom." No further definition of the character and functions of these Knights is given: but, when the whole tenour of the instrument is compared with its predecessors,

Authority of the Conservator; empowered to raise the hue and cry, to arrest offenders, but not authorized to summon a Jury or to try the offenders, who were to be committed to prison until delivered according to due course of law.

Keepers of the Peace assigned, pursuant to an Ordinance made 48 Hen. III. 1264.

Conservators directed to cause Four Knights to be elected in each Shire to treat with the King and with his Prelates and Magnates on the affairs of the kingdom.

[a] Commissions tested at St Paul's, London, 4 June, 48 Hen. III. Rot. Pat. m. 12. Fœdera, vol. i. p. 442. See also Part II., *Proofs and Illustrations*, p. 858.

it will afford a presumption, that these Four Knights filled the same station, which, as we find before, was expressly assigned to them; and that they were deputed to the Parliament for the purpose of bringing up the Inquests, which may have been taken by force of the Commission. With respect to the Conservators themselves, they were probably present in their own proper persons; for the majority of them belonged to the Baronage, or to those individuals who, whatever may have been the reason for their selection, were usually summoned to Parliament by special writ of summons either during the reign of Henry III. or under Edward I., when our records first begin to shew the succession, though imperfectly, of the Parliamentary assemblies. Soon after this appointment of the Conservators, succeeded the celebrated Parliament of Simon de Montfort, consisting of the Prelates and Magnates, and of those who have been considered as the first formal representatives of the Commons of the Realm, namely, "two of the most lawful, honest, and discreet of every Shire," and two Citizens and Burgesses, having the same qualification, from every City and "Burgh." Here, we lose any distinct mark of the inquisitorial powers; yet they may, perhaps, be traced in the recital of the writ, which states, that the Parliament was so called, to deliberate upon and establish the security, peace and tranquillity of the kingdom[a].

(See above, p. 247.)

Indications of the continuance of remedial representation, but which gradually merged in the political representation.

The jurisdiction of "Parliament," as the supreme remedial court being susceptible of better evidence in the reign of Edward I., we are able to continue the proofs of remedial representation, though not altogether in the same guise. From the accession of John until the reign of Edward III., the muniments of the Constitution exhibit a series of experiments, in which the principle was more steady than the form: if the effect was produced, the mode was indifferent; and if information relating to the state of the kingdom was presented to the Supreme Council, the manner by which it was transmitted was little regarded. When Henry III. died, Edward was in the Holy Land; and the absence of the Heir rendered it necessary to take immediate measures for the security of the realm. Four days, however, elapsed before the new King was recognized by his subjects. His Peace was then proclaimed, and the "Proceres" took the oath of allegiance to him by the side of the grave of his father, and from that day his reign began.

Death of Hen. III. 16 Nov., 1272; Edward I. not recognized until 20 Nov., when his Peace was proclaimed, and his reign began.

[a] Writs tested at Woodstock, 14 Dec. 49 Hen. III. Fœdera, vol. i. p. 449.

Part I. Ch. IX.

Convention on the accession of Ed. I., consisting of the Prelates and Magnates, and of four Knights from every Shire, and four Citizens from every City.

In the following month of January, a Convention of all the Prelates and Magnates of the kingdom was held at Westminster, at which were assembled all the Archbishops, Bishops, Earls, Barons, Abbots and Priors; from every County four Knights; and from every City four Citizens, who, in the presence of the Archbishop of Canterbury, Robert de Mortimer and Robert Burnell, the King's Clerk, again took the oath of allegiance to Edward, and undertook to preserve the peace firmly and faithfully in his name. This narrative is one of the many proofs of the insufficiency of the arguments drawn from the silence of records, for no writ or roll affords any notice of this Council, whose existence is proved by trustworthy and contemporary evidence[a]. But the Knights and Citizens were not empowered to act as legislators, or to sustain the character of representatives in the modern sense of the term; and we can only explain their appearance by supposing that their presence was enjoined, in order that they might co-operate in the general Conservancy of the Peace, nearly in the same manner as they would have done in the jurisdictions to which they belonged.

7 Ed. I. 1279. Adam de Stratton, Chamberlain of the Exchequer, impeached by twelve Jurors returned from all the Shires of England.

It will be recollected that Henry III. threatened to assemble all the Shires of England, that is to say, all the Juries of the Shires, to punish the men of Winchester. In the case of Adam de Stratton, the Chamberlain of Edward I., who was accused of various acts of extortion and oppression, we have another example of this practice[b]. To do justice upon this mighty offender, proclamation was made in every County in England, that all who had sustained any injury by his acts should appear before the Barons of the Exchequer, to prefer their complaints, and to receive what the King in Council should ordain; but the culprit was not to be tried upon the mere assertions of the complainants, for the Sheriff was commanded to return a Jury of twelve men from every Shire, to appear at the same time and place, by whom the King might be better certified, and the truth better known. However, this inconvenient and operose proceeding, which has some analogy to the assembly held under the Conqueror, was never adopted again; and the plan of transmitting the results of the inquests, instead of requiring the Jurors to record their verdicts in person, was resumed.

[a] Parl. Writs, vol. i., Chron. Abstract, p. 1. Annales Waverlienses, p. 227.

[b] Memoranda in Scaccario, 7 Ed. I., apud Maynard, p. 10.

Statute of Winchester 13 Ed. I. 1285.

The Statute of Winton, which afterwards became the foundation of the police of the kingdom, appears equally grounded upon the Anglo-Saxon common law, and upon the Ordinance of the Anglo-Norman Kings. By this act, which has, perhaps, been too hastily abrogated[a], the liability of the Hundred was regulated and enforced; no unknown stranger was to be harboured in the "upland towns." It directed how the armed night-watch was to be set in the Cities and Burghs of the realm; how the hue and cry was to be raised; and it specified and described the armour which every man was to have in his house, for the preservation of the peace according to the ancient Assize. To ensure the observance of the statute, the Constables, elected in every Hundred and Franchise, were to present the defaults to the Justices assigned, when they should come into the country, and the Justices assigned were "to present the defaults which they should find to the King " in every Parliament, and the King shall find remedy therein."

Anglo-Saxon customs enforced.

Constables to present defaults to the Justices assigned pursuant to the statute, and the Justices to carry up the presentments to the King in Parliament.

The regulations established by Edward I. were so comprehensive, that in future the police of the country depended more upon the letter of the written law than upon the traditions of the common law; and therefore the substance of the statute is inserted in the first general commissions appointing Conservators of the Peace, which appear to have been issued subsequently to the promulgation of this solemn act of the Legislature[b]. These Conservators, as before observed, were elected by the County; and the commission directs them to take inquests, by the oaths "as well of Knights as of others," of all breaches of the statute, and to certify their proceedings to Edmund, Earl of Cornwall, then the King's Lieutenant in England, at Westminster, in three weeks of Easter, "in order that, the defaults being heard and "discussed, a fitting remedy may be provided." The records of this year are very imperfect; but, by comparing the provisions of the statute with the language of the commission, we collect, that the "return" was to be made in a Parliament or Great Council of the King and his advisers, and that a remedial Ordinance was to be enacted by them.

15 Ed. I. 1287. Commissions issued appointing Conservators of the Peace pursuant to the statute.

(See above, pp. 250, 251.)

[a] It is repealed by the recent Statute 7 and 8 Geo. IV. c. 28, entitled, An act for repealing various Statutes in England relative to the Benefit of Clergy, and to Larceny and other Offences connected therewith, and to malicious injuries to Property, and to remedies against the Hundreds.

[b] Tested at Westminster, 20 Jan. 15 Ed. I. Parl. Writs, vol. i. pp. 388–91, nos. 25, 26.

Part I. Ch. IX.

Within three years afterwards, a Parliament was held, which has been considered as forming an epoch in our constitutional history. The writ[a] recites, that the King, having had certain requests made to him by the Earls, Barons, and others of the "Proceres" of the kingdom, he wished thereupon to have a "Parliament, and debate," as well with them as with the others of the Counties of the kingdom: the Sheriff was therefore commanded to cause two or three of the most discreet and competent Knights to be chosen, to appear before the King, with full power for themselves and all the Commonalty of the said County, to advise upon and to consent to such matters as by the Earls, Barons, and Proceres should be then ordained. The returns of these writs are extant: and as the greater number of the Knights thus elected are the very same who were the Conservators of the Peace, lately elected, and who were to communicate their proceedings to the Sovereign, it is difficult to resist the supposition, that, at this period, the persons elected and empowered to inquire into the observance of the laws, were also considered the proper and natural deputies of each Shire in the Supreme Tribunal of the realm; and we are thus led to conclude, that the political representation of the Commons, if not created, was at least strengthened and corroborated by the executive functions of the Knights of the Shire.

18 Ed. I. 1290. Two or three Knights to be elected from each County, to advise upon and consent for themselves and the County to what should be ordained by the Earls, Barons, and Proceres. Writ returnable at Westminster in three weeks of St. John Baptist, 15 July.

The majority of which Knights consisted of the individuals who had been also elected as Conservators of the Peace.

Assuming "Parliament" to be an assembly resulting, not from any preconceived system, but from the consolidation and subsidence of earlier institutions, we may, perhaps, be induced to think, that the delegation of the Conservators of the Peace, the Conventions of the Knights charged to bring up the inquests of the Hundred Juries, the assemblies of the older Echevins, and the representation of the Townships in the ancient Folkmoots, were all elements which entered into the composition of the national representation; and that the proximate causes of the origin of the House of Commons are partly to be sought in the remedial representation of the Burghs and Townships, as well as in the custom introduced during the reign of Henry III., of requiring the attendance of the Justices of Inquiry before Parliament. Unquestionably this hypothesis is liable to great difficulties, and it can only be presented as a theory open to examination and

Difficulties attending the theory,

[a] Tested at Rose Castle, 14 June, 18 Ed. I. Parl. Writs, vol. i. p. 21. See also Part II., *Proofs and Illustrations*, p. 860, for an abstract of the returns.

discussion; yet, so far as principles are to be deduced from records, it is as plausible as any other which has been advanced respecting the origin of the Commons House of Parliament. If we view the Knights of the Shire merely as the representatives of the Tenants "in capite," who did not attend personally in Parliament, we shall find that the groundwork of the system is wanting. It is indisputable that the Knight of the Shire was required to hold lands within the County; yet there are so many Knights of the Shire who cannot be discovered to have held their lands of the Crown, that, with an ample allowance for the deficiencies of records, it cannot be supposed that such a tenure was indispensably essential to their character. It is well known that the earliest writs upon record, requiring the return of Burgesses to Parliament, are those which were issued by Simon de Montfort, when he acted in the name of the captive King. If the practice had really originated in the reign of Henry III., is it not strange that so bold an innovation should be entirely unnoticed by all the chroniclers? that the privilege thus conferred upon the churls and traders of the towns should never have been mentioned, either to the praise or to the blame of that Chieftain, who was considered as the strenuous opponent of Royal prerogative, and the sturdy champion of popular rights? The appearance of the Commons in the Councils of the Realm, as parties assenting to the imposition of the extraordinary aids required by the Crown, cannot be evidenced anterior to the reign of Edward I.; yet it is certain that the opinion of the nation always testified in favour of the antiquity of a representation of the Commons in Parliament, delegated for the purpose of declaring the grievances of the realm[a]. Thus, in the eighth year of Edward II., the Burgesses of St. Albans complained to the King in Council, that although they held their town of the King in capite and they, as other Burgesses of the kingdom, ought to come, when they should be summoned, to the King's Parliaments by two of their fellow Burgesses, as they were wont to do in past times, for all services to be performed, nevertheless, the King's Sheriff of the County of Hertford, by the favour and procurement of the Abbot of St. Albans, and by his advice, refused to warn the said Burgesses or return their names according to his duty, that they might do their service aforesaid, in contempt of the King and prejudice of the Burgesses, and with manifest danger of disinheriting them, for which they craved an opportune remedy. The

that the Knights of the Shire appeared merely as the representatives of the Tenants in capite, who were not present in person.

No returns of Burgesses recorded anterior to those required by the writs issued in the King's name by Simon de Montfort, 49 Hen. III.

Yet this practice is nowhere noticed as an innovation.

Claims of the Boroughs of St. Albans and Barnstaple to send Burgesses to Parliament.

[a] Rot. Parl. 1 Hen. IV. no. 36.

Part I. Ch. IX.

claim of St. Albans is followed by the case of the men of Barnstaple, who alleged that they had sent Burgesses to Parliament since the days of Athelstane, from whose real or supposed charter their immunities were supposed to be derived. Upon these cases, it has been forcibly remarked, that if the appearance of Burgesses in Parliament had been a novelty, introduced within the century, it is scarcely possible the Burgesses could have ventured upon an assertion, which would have been contradicted by the public notoriety of the Kingdom[a]. The supposition, that in any early period the Burgesses had a voice in the solemn acts of the legislature, is untenable; and the pretensions of the Burghs in assuming that their ancient representatives possessed the powers assigned to them in the fourteenth century were entirely unsupported and unfounded. But the recollections of the suit and service performed by the men of the Burghs in the remedial assemblies, such as that held at St. Albans, or in connexion with the Conservancy of the Peace, may have easily given rise to the error, without any intentional falsification. The fact of the attendance was known, though its reason had become obscure; the effect was equally known, though the cause was perhaps forgotten; and when the Commons were rising into importance, they would willingly lean to any hypothesis which might add the sanction of antiquity to the rights which they enjoyed, and the privileges which they then had gained.

Probability that the claims of St. Albans and Barnstaple were grounded upon the ancient remedial representation.

(See above, p. 243.)

(See above, p. 248.)

(See above, pp. 90, 91.)

The relation between remedial representation, whether in the guise of Echevins or Jurors, to the station of the Commons, is so obvious, that it would probably have been long since acknowledged by our constitutional historians, had they not been determined on considering Parliament merely as a political Congress; instead of viewing it as a Court of Justice which was gradually united to other assemblies convened for the general administration and welfare of the Realm, and whose original attributes slowly passed away. How this great change was effected, must be the subject of subsequent investigation. Much, it will be found, was created by positive compacts and enactments. Force also aided in producing our constitution. But the most powerful of the causes to

[a] Hallam, Middle Ages, c. 8. part 3. Brady, Introduction, p. 38. Petyt, Rights of the Commons, p. 3, &c. Lord Lyttelton, History of Hen. II., vol. iii. p. 280; vol. iv. p. 83. Madox, Exch., c. 17. Willis, Notitia Parliamentaria, vol. ii. p. 312. Rot. Par. 8 Ed. II. § 195.

which our Government is indebted for its system, has been the silent legislation of precedent; occasional acts becoming usages and customs; usages and customs becoming laws: generally so obscure and indifferent in their primary origin, as neither to excite notice nor to awaken anxiety or opposition; but which, after long pursuing their slow and steady course, unheeded and unobstructed, are at length seen in full vigour and activity.

CHAPTER X.

History of the Middle Ages—not to be disconnected from the History of the Roman Empire—States of Modern Europe to be considered as representing the Fourth Monarchy—Britain under the Romans —State of its Population and Government at the period of the Roman invasion—Alterations consequent upon that event—Rapid introduction of Roman manners and customs—British Chieftains retaining a subordinate authority—Constitution of the Roman Provinces as settled after the reign of Diocletian—Institution of the Comitial dignity—"Comites," or Counts, how created—Counts of the Provinces—Irenarchs—Municipal Corporations—The Decurions—Colleges or Guilds of Operatives —Assemblies of the Provincials—The Council of the Seven Provinces of Gaul—Provincial organization of Roman Britain—Military Colonization—Lands held upon condition of performing Military Service by the Veterans, the Limitanean Soldiery, and the Barbarians—Origin of the Feudal System—Military Counts and Dukes—Military Government of Roman Britain—Adoption of Roman forms of Government by the Founders of the Barbarian Dynasties.

Part I. Ch. X.

Political Constitution derived, to a considerable extent, from the Legal Constitution; the law resulting from the state of the people, and the Political Constitution, from the machinery employed to execute the law.

HITHERTO I have purposely avoided noticing the political constitution of the country, otherwise than as it appears to be connected with certain judicial customs and institutions which may be supposed to have contributed to form the supreme Councils of the Realm. Laws, according to the natural tendency of society, arise from the state and condition of the people; and the government results from the machinery employed for carrying the laws into effect. In every community not absolutely degraded into lawless despotism, this course may be always inferred, though occasionally interrupted by violence, or obscured by the total loss of historical evidence and legal records; and the development of the various branches of the Legislature cannot be traced either with truth or clearness, unless we proceed to the investigation with a full knowledge of the jurisprudence which these bodies were

bound to enforce and maintain. In such inquiries, I assume that every English reader is sufficiently well acquainted with the general features of the English Government, to be able to anticipate the points which will ultimately be elucidated by the details of ancient policy successively presented to his view. Thus, when treating upon the judicial representation of the Townships, I have alluded to military tenures without defining their nature; and to the Parliaments of the thirteenth century, though, as yet, I have entered into no examination of their component parts. Order is of less importance than intelligibility; the adherence to chronological arrangement demanded, though sometimes too rigorously, in relating the events of history, is not equally applicable in deducing the history of institutions. Vague and undefined in their origin, we can often only guess at the cause, by examining the effects it has produced. When the earlier stock has perished, we must be content to ascertain its character from the scions which grew from the root after the main stem was destroyed, and which we must therefore describe before they have ascended from the soil.

Many facts anticipated, on the assumption that the reader is familiar with the general features of English history.

In order to understand the policy which prevailed in England after it became subjected to the Anglo-Saxons, it will also become necessary to bestow some attention upon the history of Britain during the Roman Empire. This period is not to be treated as a prologue which can be rejected at pleasure, and detached from the subsequent scenes. The Seven Hills may again become the lair of the wolf, in those last days when the desolation of Babylon will afflict the banks of the Tiber; but although the vestiges of the Colosseum and of the Vatican shall crumble away from the face of the earth, the institutions, the laws and the fortunes of Rome will not have ceased to be inseparably interwoven with the destinies of mankind. The Empire has been continued, not destroyed; for its domination did not sink and perish beneath the yoke of the invader. Whilst its outward form was altering, it was replaced by the communities of Western Christendom; and instead of considering these States as formed by the subversion of the Fourth great Monarchy, they must be viewed as founded upon an authority which, severed and divided, was transmitted to the founders of the Barbarian dynasties, who succeeded to the inheritance of the Cæsars. It is in the Codes of the Lower Empire that we discover the origin of the principles of government and public law, imparting the European character, a character understood so easily, yet defined with so

Roman period; its connexion with the Anglo-Saxon period of the history of Britain.

Roman Empire, or Fourth Monarchy, not destroyed by the determination of the Imperial Governments, but continued in and by the States of Western Christendom: the founders of the Barbarian dynasties being the inheritors, within their respective kingdoms, of the imperial power.

"European character," principally derived from the influence of Roman institutions and Roman laws.

Part I. Ch. X.

much difficulty, but which has rendered those races upon whom it is now impressed, diverse from all the other nations of the world.

The affinities of the ancient Britons have often been discussed with great learning, and sometimes with more acrimony and vehemence than the subject requires; but the materials for investigation are confined within a narrow compass. Excepting the guidance received from the tokens, generally plausible, though not always infallible, of language and dialect, our knowledge does not extend beyond a very few facts contained in the classical writers; and these indicate that the soil was unequally divided between several distinct lineages. The position of the cities, the bays and the promontories of ancient Britain are given by the Geographer; and considering the great changes of inhabitancy which have since taken place, the easy identification of his descriptions is a singular test of his knowledge. But the tables of Ptolemy[1] could not describe the sinuous demarcations and lengthened frontiers of the territories occupied by the different nations; and the ecclesiastical divisions of England having been remodelled after the Anglo-Saxon Conquest, we cannot, as is the case in Gaul, ascertain the boundaries of the British States from the circumscription of the Episcopal Dioceses.

Ancient British Tribes.

Ptolemy, general accuracy of his notices.

Geographical position of the British Tribes uncertain.

Ecclesiastical divisions of France, generally agreeing with the limits of the ancient population.

When Cæsar landed in Britain, many Tribes had recently passed over from Belgic Gaul[a]. The names of their Colonies attested their consanguinity with the parent States on the Continent: and the Southern, and perhaps the Eastern districts, were inhabited by these Teutonic settlers, the "refuge-taking tribes" of the Triads. It is possible also, that detachments of this, or of some kindred race, may already have occupied some of the shores beyond the Thames; and the Coritani[2], who have been considered as Teutons, had established themselves near the Humber. By these immigrations, which the traditions of the Cymri represent as pacific, or the result of compact, the earlier Celtic population had been dispossessed of no inconsiderable portion of their territories: yet, from the estuary of the Clyde to the Channel, Britain was peopled by the descendants of Gomer, the first occupants of the ocean islands; many of whom still continue as a distinct and unmingled race unto the present day. Far in the North were the Caledonians[3], including the tribes afterwards called Picts, whose history is one of the enigmas which will never cease to amuse and baffle the sober inquirer.

Belgic Tribes: their settlements in Britain; probably the "refuge-taking tribes" of the Triads. (See above, p. 21.)

Cymri, the population of the West.

[a] Cæsar, lib. v. c. 10.

In time of peace, it is stated that the tribes of Britain owned no common Sovereign, yet each separate state was a monarchy; at least all the communities noticed by the Roman historians were subjected to Chieftains. The modern county of Kent alone possessed four such Reguli[a]. Probably the system of Clanship generally prevailing in ancient Britain did not differ materially from that which existed more recently in Ireland, and also in the northern parts of the island, where it survived, unbroken by subsequent revolutions. But even with the information derived from the Cambrian laws and the analogous customs of the Gael, the outline of the British policy can only be filled up by fancy. It may, indeed, be assumed that some of the usages and maxims of the Druidical era are not unfaithfully recorded in the Triads: nor can we refuse to admit that the practical code of Howel may occasionally be founded upon the primeval jurisprudence and policy of the Cymri. Yet the principles and doctrines so collected or surmised cannot supply a view of the political state of society anterior to the Roman invasion, without the aid of a series of arbitrary conjectures: and I will not indulge in them beyond the single supposition, that the "Pencenedyllion" were the representatives of the ancient chieftains, who retained the headship of their people, although they had not acquired the sovereignty of the soil upon which their subjects and kinsmen resided.

The British Tribes subjected to Kings or Chieftains, who were very numerous.

Clanship; probably subsisting amongst the ancient Britons in the same form as in Ireland and Scotland at later periods.

Pencenedyllion (see above, p. 55) supposed to be the descendants of the primitive Chieftains, who retained the headship of the Clans, without acquiring the sovereignty of the soil.

The royal authority, as is familiarly known from the instances of Boadicea[1] and Cartismandua[2], might be exercised by a female; and indeed it is not improbable but that, in some cases, the descent of the chieftainship proceeded in the female line, as amongst the Picts. The strange custom of the Britons, by which one wife was assigned to many husbands, was probably the original cause of this mode of inheritance amongst the tribes wherein it prevailed[b]: and the occasional admission of women to the rights of sovereignty is one of the few marked points of disagreement between the laws of the Celts and the unmixed Teutonic nations. The latter never allowed the sceptre to fall into the distaff.

Royal authority might be exercised by women.

Descendible in the female line amongst the Picts.

Women not admitted to command amongst the unmixed Teutonic tribes.

[a] Cingetorix, Carvilius, Taximagulus, Segovax; Cæsar, lib. v. c. 22.

[b] Cæsar, lib. v. c. 14. Dion Cassius apud Xiphil. Cæsar says, that the children considered the first husband as their father; Dion, that the husbands brought them up in common. These contradictory authorities do not shew the laws of inheritance; they seem to relate only to the *theory* of relationship in such a family.

Part I. Ch. X.

Gaul, when first visited by Cæsar, was composed of numerous "Civitates," or States; some governed by Kings, others by an aristocracy; but who were united in artificial and well organized confederacies. Their general councils or assemblies were invested with the power of administering public affairs; and the whole system of their government may be considered as indicating a degree of civilization, which had advanced beyond the policy prevailing amongst the coeval Alemannic or Germanic tribes, whose federations, though not unwisely or unskilfully planned, present the organization of an army rather than the plan of a Commonwealth. The vestiges of an older and better state may be discerned amongst the Teutons; but they had retrograded, and they were then connected more by the desire of plunder, or the fear of danger, than by feeling the necessity of submitting to the mandates dictated by international law. I use the term international, because the populations inhabiting the same tract, and often known by the same collective name, had in no instance become really amalgamated into one commonwealth, whose members were subjected to one pervading sovereignty. The disunion of the Britons, their civil dissensions, and the absence of any steady system of defence[a], may perhaps be considered as negativing the existence of any general government, analogous to that which prevailed in the neighbouring Gaul, though it is evident that several tribes were not infrequently governed by one supreme leader, who acted as their King.

Gaul, a confederacy of "Civitates," or States.

Teutonic confederations, calculated rather for military operations, than for civil government.

Dissensions of the Britons, and want of political union, though, in some cases, various tribes were combined under one leader.

With the loss of their independence, the internal organization of the British tribes immediately sustained great changes. The conquests of the Romans were attended with violent confiscations of property; like Prasutagus, the island sovereigns saw their territories transferred to the victors. In those states which were converted into Colonies, the possessions of the inhabitants were seized without mercy; the domains of the Rulers became the endowments of the veteran soldiery, and the inferior orders, reduced to a state of qualified servitude, cultivated the glebe, to which they were attached by the bond of villeinage. After the reign of Claudius[1], however, it is probable that these spoliations ceased; and the lands which continued to be granted as the reward and condition of military service, were either such as had been acquired from tribes in actual hostility to the subjects of the Empire, or constituted the imperial demesnes. When

Roman invasion: many British Kings dispossessed of their territories.

Military Colonies: lands of the Britons confiscated and granted to the Roman soldiery, to be held by military tenure (see below, p. 288).

Inferior orders, reduced to the state of "Coloni" or Villeins.

No traces of such spoliations after the reign of Claudius.

[a] Tacitus, Agricola, c. 12.

the freedom of Rome and the privileges of the Roman citizen had been imparted by Caracalla[1] to all the Provincials, the Briton enjoyed his patrimony without fear or challenge; and the long intervals of silence respecting the affairs of Britain attest the good fortune of the island, which afforded no events to be recorded in the ensanguined page of history.

Freedom of Rome granted by Caracalla to all the Provincials. (Gibbon, vol. i. chap. 6.)

This tranquillity appears to have been the quiet of ease and prosperity. Occasional exactions might vex the Britons, but, on the whole, the government or protection which they received from Rome was not disadvantageous or oppressive. The military arrangements, as well as the civil policy of the Empire, favoured the settlement of the Romans in the provinces; and the peace of the country was promoted by their intercourse with the original race. Of these friendly sentiments many tokens may be enumerated. The facility or eagerness with which the Britons adopted the customs, the arts, the garb and the refinements of their conquerors excited the surprise, and almost roused the indignation of the philosophical historian[a]. The Latin language, the great medium of intercourse and the vehicle of learning, was acquired with equal facility. In Gaul, we know how entirely it superseded the Celtic dialects, and the eloquence of the neighbouring country passed into Britain. A Province in which Papinian[2] presided must have been familiarized with the Roman law. Even the traditions concerning the Trojan origin of the Britons, are indications of this reciprocal cordiality. It is indifferent whether these tales existed before the arrival of the Romans, or whether the adventures of Bruto or Brutus[3], the son of Silvius, were invented or improved by the Bards for the purpose of propitiating the favour of those who also prided themselves in being the progeny of Æneas; since, in either case, they would be either the means of conciliation or the consequences of mutual good will. Adorned by the pen of romance, these legends are presented in a questionable shape, but they are not to be neglected as recent or arbitrary fictions. Taliesin addressed his countrymen as the "remnants of Troy." Nennius repeats the tradition in the eighth century; and if the Gauls gloried in their descent from the fugitives of Ilium, the same genealogy could scarcely be strange or unknown to their island brethren[b]. The country was replete

Prosperity of Roman Britain.

Britons adopt the civilization and customs of Rome.

Traditions concerning the Trojan origin of the Britons,

the means of conciliating the Romans.

Similar traditions in Gaul.

[a] Tacitus, Agricola, c. 21.

[b] Hanes Taliesin, Myvyrian Arch., vol. i. p. 95. Nennius, Hist. Brit., c. 3 and 4. Sidonius Apollinaris (lib. vii. ep. 7) alludes to this

Part I. Ch. X.

with the monuments of Roman magnificence. Malmesbury appeals to those stately ruins as testimonies of the favour which Britain had enjoyed; the towers, the temples, the theatres, and the baths which yet remained undestroyed, excited the wonder and admiration of the chronicler and the traveller[a]; and even in the fourteenth century, the edifices raised by the Romans were so numerous and costly, as almost to excel any others on this side of the Alps. Nor were these structures amongst the least influential means of establishing the Roman power. Architecture, as cultivated by the ancients, was not merely presented to the eye; the art spake also to the mind. The walls, covered with the decrees of the legislature, engraved on bronze or sculptured in the marble; the triumphal arches, crowned by the statues of the princes who governed the province from the distant Quirinal; the tesselated floor, pictured with the mythology of the state, whose sovereign was its pontiff; all contributed to act upon the feelings of the people, and to impress them with respect and submission; the conquered shared in the fame and were exalted by the splendour of the victors.

Roman monuments existing in the Middle Ages, so considerable at York, Caerleon, Carlisle, Hexham, Lincoln, Bath or Aquæ Solis, &c. as to excite the astonishment of the antiquary.

Moral influence of architecture as practised amongst the ancients.

Whilst the Britons were thus becoming Romanized, the national characteristics were not obliterated, nor did an entire and overwhelming revolution take place in their institutions, whether religious or political. Admitting that many of the modern theories concerning the doctrines and rites of the Druids are unfounded and visionary, there is still no reason for rejecting the supposition that the order of the Priesthood continued to be upheld, not only in name, but as constituting a flourishing hierarchy. When the first fury of war had subsided, there is no evidence of any further attacks upon the British aristocracy; and though we may collect from Tacitus, that the rank of the

Subsistence of Druidism,

and of British princes beneath the Roman supremacy.

descent, in deploring the cession of Auvergne to the Visigoths; Facta est servitus nostra pretium securitatis alienæ. Arvernorum, proh dolor, servitus, qui, si prisca replicarentur, audebant se quondam fratres Latio dicere, et sanguine ab Iliaco populos computare. [Our subjection has become the price of others' safety. The subjection of the Arverni, sad to tell, of those who, if we were to recall the ancient story, once dared to call themselves brothers to the Latins and to reckon the descent of their race from Trojan blood.]

[a] Higden, lib. i. p. 199. Will. Malm., de Gestis Regum, in Proem.; id., de Gestis Pontif., lib. iii. p. 147. Giraldus Cambrensis, Itin. Kambr., c. 5.

British rulers had been diminished, still it appears that they retained a degree of subordinate authority. Cogidumnus[1] was confirmed in the royal power by Claudius; he obtained an increase of territory from the bounty of the Roman Emperor; and Lucius, under whose reign Christianity is said to have been first preached in Britain, is supposed to have been a descendant of the monarch of the Regni[a2]. The existence of the royal title in the provinces of the Empire, was one of the proudest trophies of Roman supremacy. In Africa, the Kings of Mauritanian race acquired only an inchoate right by descent: they were raised to the throne by the Emperor, from whose hands they received their regalia; and it is a singular circumstance, that, even when these feudatories were engaged in war with the Empire, this investiture was requested and obtained from the chiefs of the hostile Commonwealth. Such, indeed, had long been the public law of the Empire: the vassals who were allowed to retain the royal title, accepted their inheritance as a gift, and were well contented to hold their dominions by the permission or indulgence of their masters. Limited and restrained, the British allies and tributaries subsisted in various districts, intermingled with the territories in which the inhabitants were subjected to the Empire, without any intermediate authority.

Cogidumnus. (Tac., Agric., c. 14.)

Kings of Mauritania received their investiture from Rome, even in time of war. (Procop., de Bello Vandalico, lib. i. c. 25.)

British Kings rule with a similar degree of dependence.

At the era constituting the dawn of the history of modern Christendom, and when the complicated policy, introduced by Diocletian and improved by Constantine, received its fullest extent and perfection[b], four Prefects were entrusted with the administration of the Roman world; and the Prefect of the Gauls, holding his court at Trèves, extended his sway from Tingitania in Africa to the mountains of Caledonia. The Prefectures were divided into Dioceses; these again into Provinces,

Government of the Roman Provinces as settled between the reigns of Diocletian and of Arcadius and Honorius, being the period in which the history of Modern Europe properly begins.

The four Prefectures, their division into Dioceses and Provinces,

[a] Stillingfleet, Orig. Britan., p. 67.

[b] Gibbon, vol. iii. ch. 28. A complete general view of the provincial organization of the Empire, as it subsisted in the early part of the fifth century, is afforded by the "Notitia Dignitatum utriusque Imperii" [List of Titles of Dignitaries in both Empires], a work of great singularity, and deserving of more attention and editorial care than has hitherto been bestowed upon it. The matter is arranged according to Provinces, stating the rank and titles of their civil and military governors, and their establishment and staff. The stations of the military are also detailed; and the manuscripts contain drawings of the ensigns and devices, as well of the governors, as of the various bodies of soldiery.

Part I. Ch. X.

governed by Vicars, or Vice-Prefects, Presidents, or Consulars.

The Comitial dignity.

The "Comites," at first merely the associates or confidential friends of the earlier Cæsars, gradually assume the character of Privy Councillors, and obtain a recognized rank in the Empire.

Receive an allowance from the Emperor, and are divided into classes.

respectively subjected to the Vicars or Vice-Prefects, or to the Presidents or Consulars, each in their degree invested with the various powers of judicial government and civil policy. About the same time that this system was matured, a new order of public functionaries became a recognized rank of nobility in the Empire. Under the earlier Cæsars, the distinguished individuals whom the Sovereign chose to select as his "Companions," might probably claim an unrestrained admission to his presence. A chosen friend is usually a confidential adviser. When the Emperor sat in his Prætorium, he permitted his associates to deliver their opinions, or perhaps he claimed their ready and convenient help to sanction his determination by their voice and assent, or to assist him by their prudence in delivering his judgments. This participation so speedily acquired the appearance of an established custom, that Hadrian appeared to be an innovator, when he composed a Council of judicial assessors, comprehending not only his Counts but also a bench of Jurisconsults, who, although distinguished for their learning and wisdom, did not enjoy the known intimacy of the Emperor[a]. And the allowances which the Counts expected from the Emperor, as well as their division into classes[b], may lead us to suppose that various duties were assigned to the shadows of the imperial presence, who,

[a] Cum judicaret, in consilio habuit non amicos suos aut *Comites* solùm, sed jurisconsultos, et præcipue Julium Celsum, Salvium Julianum, Neratium Priscum, aliosque, quos tamen senatus omnis probasset, Spartianus, Vita Adriani, c. 18. [When he was sitting in judgment, he had as a council, not only his own friends or *Companions*, but persons learned in the law, and especially Julius Celsus, Salvius Julianus, Neratius Priscus, and others, of whom however the whole senate had approved.]

Comes, Comites, a comitando primum dicti aulæ Romanæ ac Imperatorii Palatii Proceres, quod ii Principem sectarentur, ejusque lateri adhærerent, seu domi maneret, seu in expeditionem proficisceretur. Hinc *Comites Imperatorum* vel *Augustorum* in veteribus inscriptionibus passim Romæ, Du Cange. [Count, Counts, the Nobles of the Roman Court and Emperor's Palace, so called first from "accompanying," because they followed the Prince and kept by his side, whether he remained at home, or set out on an expedition. Hence the expression, *Counts of the Emperors* or *Augusti*, in old inscriptions everywhere in Rome.]

[b] Suetonius, Vita Tiberii, c. 46; and the comment of Salmasius. Lampridius, Alex. Sev., c. 20.

designated by a term which did not appear derogatory to the dignity of the Roman, were, in truth, only the attendants or servants of the Sovereign. This dependence, which might be concealed so long as the Emperor affected to be considered only as the first citizen of the Republic, was accepted as an honour after the pompous ceremonial of Persia had been introduced by Diocletian. Distinguished, first perhaps by custom and etiquette, and afterwards by law, into three classes, the Counts formed a personal nobility, whilst the title itself no longer resulted from habitual association with the Emperor[a], but was conferred by patent of creation or special diploma. Every department of the Court, and every employment connected with the "sacred person" of the Emperor, was assigned to the high functionaries included in the Comitial order: the Chief of the body physicians was a Comes; the same title was given to the Commander of the "Domestics," or body-guards; and the Wardrobe, the Treasury, and the Stable, were all superintended by their respective "Comites[b]"; from the latter of whom the proudest office of the feudal monarchies was afterwards derived. The honour might also be granted absolutely, without any peculiar duty being assigned to it, in which case it was merely a title, but accompanied with the privilege of entrance into the imperial consistory, which was assigned to all the Counts of the first rank or highest degree; and such a dignity, which graced the municipal magistrate after he had retired from public life, might be also bestowed upon the Proconsuls or Prefects, to increase their state and consequence whilst in office. Hence the Proconsuls and other local governors were also called the Counts of the Provinces. The municipal authority of the governor was of little effect unless supported by the sword; the "Comes" was therefore empowered to compel obedience to the law; the robber and the malefactor were to dread his severity; and for these purposes of coercion, a military force was necessarily at his disposal. In these duties, the Comites were assisted by certain

"Comites," established as a personal nobility by Constantine, who divides them into three ranks; and from which period they were created by special diploma or patent.

Imperial palace and household; Counts placed at the head of each department.

The Comes-Stabuli, or Constable.

Title of "Comes" sometimes granted without any peculiar office.

Counts of the first rank possessed free entrance into the imperial consistory.

Title of "Comes" bestowed upon the Proconsuls, &c., for which reason they appear to have been styled the Counts of the Provinces.

[a] Eusebius, Vita Constantini, lib. iv. c. 1.

[b] Comes Archiatrorum, Comes Domesticorum, Comes Vestiarii Sacri, Comes Thesaurorum, Comes Stabuli Sacri. [The Count of the Physicians, the Count of the Body-Guards, the Count of the Sacred Wardrobe, the Count of the Treasures, the Count of the Sacred Stable.] Stilicho was Count of the Domestics as well as Constable. The principal authorities upon which the view of the offices of the "Comites" is grounded are found in the sixth book of the Theodosian Code, and the Commentary and "Paratitlon" of Gothofredus.

Part I. Ch. X.

Irenarchs, officers performing duties analogous to the Anglo-Norman Conservators of the Peace.

officers, denominated "Irenarchs," or Conservators of the Peace, commanding an armed police, whose posts were dispersed over the Provinces. Soldiers, yet under the guidance of the civil power, their peculiar duty was the apprehension of malefactors, and the general preservation of the public tranquillity[a]. Governors of cities were also appointed by the same name and with the same honours as the "Rectors" of the Provinces, and possessing the same, or perhaps more extended powers[b].

"Irenarchæ, Magistratus Militares qui ad id constituti erant, ut Provincialium tutela suscepta, quietis et pacis per singula territoria concordiam stare facerent," Du Cange.

Counts of Cities.

[a] The Irenarchs were abolished, at least in the Eastern Empire, by Theodosius (Cod. Theod., lib. xii. tit. 14, de Hirenarchis). They appear to have been the "Adsertores Pacis" [Guardians of the Peace] of the Visigoths (LL. Vis., lib. ii. tit. 1, §§ 16 and 26). The Irenarch was particularly charged with the pursuit of robbers, but all offenders might be arrested by him. Saint Nestor, Bishop of Mandi, was thus brought to judgment by the Irenarch of the City. (Acta Sanct. Februarii iii. p. 628.) The Conservators of the Peace of the Anglo-Normans (see above, pp. 245–249) correspond so closely with the Irenarchs, both in name and office, that we might almost be tempted to suppose that the English Legislators had borrowed from the Roman Code. The "Centenarius" of the Franks (see above, p. 72) had a striking similarity to the Irenarch.

[b] The Theodosian Code, and its indefatigable Commentator, supply the principal information respecting the duties and functions of the Provincial Governors; lib. i. tit. 7, de Officio Rectoris Provinciæ: lib. vi. tit. 17, de Comitibus qui provinciis regunt. It is not always easy to distinguish them from the Military Counts, and they have been sometimes confounded, even by Gothofredus; but that the Counts of the Provinces were the civil governors appears from the rescript of Constantine, "Ad Provinciales A.D. 331" (Cod. Theod., lib. i. tit. 7, l. 1), intended to remedy the extortions of the ministerial officers of the Counts, and which empowers the parties aggrieved to prefer complaints, "apud Comites Provinciarum, aut apud Præfectum" [before the Counts of the Provinces or before the Prefect]. Cassiodorus has preserved the general precedent for creating a "Comes" of a Province (Variæ, vii. 1), and the particular instruments appointing the Counts of Syracuse (ii. 22), of Naples (vi. 23), and of Ravenna (vii. 14); and I follow the example of Du Cange, Gibbon and Dubos, in supposing that the forms of the Gothic Chancery may be quoted as faithful examples of the imperial administration. The patent or diploma of the Count was accompanied by a writ or mandate addressed to the lieges whom he was to govern. In the case of the Comes of Naples, it is directed to the Honorati, the Possessores, and the Curiales

Concurrently with this delegated authority, a portion of administrative jurisdiction remained to the subjects of the Empire. Notwithstanding the supremacy of Rome, and the general communication of the rights of citizenship, the individual existence of the vassal nations was always recognized and sometimes respected. They were aggregated to Rome, without being incorporated either with the Roman people or with each other. And the Emperors were placed at the head of a vast dominion, composed of communities, united by obedience to the behests of their masters, equally enjoying the same rights, and, as far as the government thought fit, subjected to the same laws; but retaining their peculiar systems of policy and jurisprudence[a], which were allowed to possess legal validity, if consistent with the policy of the Empire and unrepealed by the supreme legislature.

Roman Empire, composed of nations which were aggregated together without being incorporated; and which retained their local customs and peculiar laws, both written and unwritten, when not contrary to or repealed by the general laws of the Empire.

So long as the maxims of Republican Rome were yet respected, the rights of the Colonies, of the Municipia, and of the Latin cities were carefully and accurately distinguished; and the settlements of the Roman citizens, who founded for themselves a new home and country, could not fail to be invested with more ample privileges than those communities, who, whether subdued by force or allied by compact, derived their franchises from the clemency or gratitude of the Emperor. But in the age of the Antonines[1], the characteristic distinctions between these different bodies were almost forgotten by the practical jurist[b]; and the law completed the obliteration which had been nearly effected by time. In the decline of the Empire, they were all invested with equal immunities, and their respective constitutions were only diversified by local customs, which did not disturb the general bearing and tendency of the imperial laws. Instead of three classes of municipal corporations, only one existed in effect, though perhaps the individual communities composing that one class were not reduced to an entire uniformity.

Roman settlements originally divided into Colonies, Municipia and Latin Cities.

These distinctions, obliterated in practice.

An extensive territory was included within the jurisdiction of every "Civitas"; in Gaul, these districts appear to have been conterminous with the political divisions established amongst the Barbarian inhabitants before the Roman invasion. Each Civitas represented an ancient Gaulish State, and the entire

"Civitates" of Gaul formed out of the ancient Gaulish States.

(vi. 24), and the general precedent is to the same effect (vii. 28). It is possible that, in some instances, the title of "Comes" was given by courtesy, like the title of "Lord" in England.

[a] Dig., lib. i. tit. 3, l. 31; lib. xxxiv. tit. 35, l. 36.

[b] Aulus Gellius, lib. xvi. c. 13.

country was composed of these communities, no part of the territory being extra-municipal. A ruling body or Senate, whose members were termed the "Decuriones" or "Curiales,"[1] acted as the directing power of every city. The burden of discharging this office was appropriated to peculiar families: the obligation of the Decurion resulted from his birth; the language of the law emphatically declares, that he was bound to perform the senatorial duties in consequence of his race, blood and origin[a]. But pecuniary wealth also imposed the same functions; and the "Possessor" who owned a certain extent of land, obtained, in like manner, a qualification which rendered him liable, however

The "Decuriones" or "Curiales," of whom the "Ordo" "Curia," or Senate of the city was composed.

Decurionship, hereditary in certain families, resembling the patrician families of Nuremberg, Frankfurt, and other German cities. But individuals possessing a certain qualification of property might also be compelled to accept the office, which, though honourable, was also very burdensome, the Decurions being personally and individually liable to

[a] Per originem obnoxii Curiis: qui sanguinis nexu Curiæ tenentur: qui ex curiali stirpe descendunt: qui sanguine curiali obstricti: qui sorte nascendi municipalibus muneribus obligati. [Bound to the Curia by their origin: those who are bound to the Curia by the tie of blood: those who descend from curial stock: those who are bound by curial blood: those who are under an obligation to serve municipal offices by the chance of their birth.] These and many other similar expressions fully shew that the rank was inheritable, just as, in most English boroughs, freedom is acquired by birth, not by birth in the place, but by being the son of a freeman. The qualification by property is not without analogy to that acquired by Burgage tenure. The materials for the history of the municipal corporations of the Lower Empire are to be principally collected from the Theodosian Code, lib. xii. tit. 1, de Decurionibus, containing one hundred and ninety-two laws, of which about one fourth only are retained by Justinian. Gothofredus cannot be said to have illustrated this very important inquiry; for though his very bulky commentary at once embraces every authority which can be quoted, yet he leaves all the difficulties untouched and unexplained. A good summary of the laws will be found in Pancirollus, de magistratibus curialibus et corporibus artificum [Concerning curial magistrates and corporations of craftsmen]. Gibbon makes a transient allusion to the Decurions (vol. iii. ch. 27), but without entering into any further discussion. Mr Spence has pursued the inquiry with great diligence; and Savigny, in his masterly work (so neglected in this country that an able translator was compelled to abandon the undertaking after publishing the first volume) has treated it with profound knowledge and acute criticism, though he acknowledges that many portions of the laws are almost inexplicable. The obscurity of the subject must be my apology for any errors into which I have fallen, when I have had the temerity to depart from the opinions of my predecessors.

unwilling, to be enrolled as a member of the Senate of the city. Honours and privileges were attached to this station, which, nevertheless, was sometimes considered as very burdensome; perhaps on account of the responsibility imposed upon the Decurions, who were compelled to make good any defalcation in the taxes assessed upon the civic corporation to which they belonged.

make good any deficiency in the quota of taxation assessed upon the city.

According to the more usual constitution, the senior member of the "Curia," designated as the "Principalis," appears to have filled nearly the same place as the "Princeps" of the Roman Senate; and after a stated period passed in the public service, the title of a "Comes" was acquired by the veteran magistrate. In most, if not in all cities, also, there existed a select bench called the "Primates," who seem to have formed a governing class in the Court of Decurions. The "Honorati" were nearly of the same description; and the "Possessores," or landholders, also formed a distinct order in the municipalities of Italy and Sicily[a]. But these, and perhaps other special institutions, are of little import in considering the nature of the corporate law.

"Principalis," or Senior Decurion, who, after a certain term of service, acquired the Comitial dignity.

"Primates" and "Honorati," ruling classes of the cities.

Besides the main incorporation, each city contained various "Colleges" of operatives, who held an ambiguous station between slavery and freedom. In the more recent periods of the Roman government, these bodies derived their legal existence from the authority of the state, either expressed or implied; testified by the grant contained in the consultum of the Senate or the rescript of the Emperor, or evidenced by that prescription which was equivalent to a written decree; nor was any incorporation valid without such sanction. Gaius, from whom this information is obtained, faithfully declares the law as it prevailed among his contemporaries: but his opinion does not throw any light upon the real origin of the "Colleges"; and the tradition which assigns

"Colleges," i.e. Gilds or Incorporations of operatives and artificers, supposed, according to the later laws, as declared by Gaius (Dig. lib. iii. tit. 4), to derive their existence from the authority of the state.

[a] In Alexandria there were five presiding members, who represented the five wards of the city. In other cities there were usually seven, or ten, or twenty. The Corporations of Naples and Forli were composed of Honorati, Possessores and Curiales (Cass., iv. 10, vi. 24). In Feltri, the Possessores only are named (Cass., v. 9). In Catania, the Defensores are ranked between the Possessores and Curiales (Cass., iii. 49). The Honorati have been considered as individuals who had filled offices in the nomination of the Emperor; but the term seems to have had a more extensive signification. It was given to all the members of the Council of Arles[1] (see below, pp. 276, 277). The Defensores, where they existed, seem to have held an office not unlike that of the Tribunes of the people.

Part I. Ch. X.

the first creation of the companies of artificers to Numa[a], is only another mode of asserting that they had subsisted from immemorial antiquity. Each society venerated its tutelary genius or deity, in whose temple the members assembled, and whose protection they invoked[b]. Peculiar religious rites were also practised there, perhaps with a veil of secrecy; and those forms of worship constituted an additional bond of union. The members of some of these Corporations partook of the fare afforded by a common table; and the term "Sodalitas," applied also to the analogous gilds of the Middle Ages, indicates the fellowship which prevailed amongst the workmen following the same trade[c].

Said to have been first created by Numa.

Religious ceremonies or mysteries practised in these societies.

Employments hereditary, so that the son of the handicraftsman became a member of the "College" by birth or caste.

The Collegiates were linked to their avocations by caste. If the laws of the Theodosian code were duly enforced, the son was compelled to follow the employment of his father; he did not acquire an exemption even by entering into holy orders; and the suitor who sought the hand of the daughter could only obtain his bride by becoming wedded to the calling of her family. Immunities were bestowed upon the artificer, with the intent that he might be the better enabled to instruct his son in the

No exemptions or excuses allowed to the male children, and the females compelled to espouse persons of the same avocation; a stranger marrying the daughter being bound to take up the employment of her father.

[a] Plutarch, Numa. Plin., Hist. Nat., lib. xxxiv. c. 1; lib. xxxv. c. 12. The Colleges were abolished by the Senate A.U.C. 685; re-established by Clodius (Cic., in Pisonem; Asconius, Cornel., p. 137, in Pisonem, p. 158); but abolished, as to all except those of ancient foundation, by Julius Cæsar; cuncta Collegia, præter antiquitus constituta, distraxit, Suetonius, Jul., c. 42. These spurious Gilds, however, revived, and were again suppressed by Augustus; Collegia, præter antiqua et legitima, dissolvit, Suetonius, Aug., c. 32 [He dissolved all the gilds, except the ancient and lawful]. Lampridius specially notices certain Colleges, created by Alexander Severus (c. 33), and states that all the corporations of artificers were created by him. This assertion, however, can only refer to additional privileges which he may have granted to these bodies, or to their restoration.

[b] Heineccius, de Collegiis Opificum. Beaufort, vol. ii. p. 141. Dubos, vol. i. p. 34. Spence, p. 21, &c.

[c] Constantine enumerates thirty-five classes of artificers, whose employment required so much skill as to entitle them to the peculiar favour of the legislator. Cod. Theod., lib. xiii. tit. 4, de excusationibus artificum [concerning the exemptions of craftsmen]. Amongst them are the Architecti; and the English Freemasons have claimed a relationship to the Roman *Mystery*. According to the constitutions of the "Lodge of Antiquity" at York, the Craftsmen are the successors of the architects sent to Britain by Claudius.

useful knowledge which he possessed; and though apprentices or disciples might be received into these corporations, there is no reason for supposing that, when once admitted, they were exempted from the general law, or that the profession was not equally hereditary in their posterity. Mere workmen, or "artificers," do not appear to have been necessarily ascribed to the glebe; but the mixed employments which required the occupation of the soil, were exercised by those whom we may assimilate to the villeins regardant of the Middle Ages, and whose condition, at a remote period, seems to have been of the same nature. For in these crafts, the occupation, so inherent in the race, was also annexed to the possessions held by the individual, who was therefore fettered by a double tie, by caste, and by a species of prædial servitude.

Apprentices might be received; but the employment descended to their children, in the same manner as the original members.

"Colleges" in which a double bond existed, *Caste*, as before mentioned, and a species of prædial servitude or villeinage, the obligation of carrying on the employment being annexed to land; and the purchaser of the land, if the same was alienated, becoming bound in the same manner as the hereditary operative, as instanced in the case of the "Pistores," who were both millers and bakers; and the "Naviculariii," a species of lightermen.

It may not appear altogether unaccountable that the individual who possessed the mill, the bakehouse, the cattle and the slaves, should be compelled to carry on the necessary trade which fed the hungry multitude; or that the wretch who had been condemned to the toil for his crimes should not be allowed to depart from his place of punishment. The same reason, however, does not apply to the master manufacturer, who received the produce of his forced labour; and yet an equal obligation was annexed to the ownership of the town mansion or the country farm, which the "Pistor" held as his private property. The sale of such possessions to persons of the senatorial rank was prohibited, on the express ground of the service which the purchase imposed upon the person holding the land; and as the same obligation is annexed to other "Colleges" mentioned in the laws, it appears to have been the general principle of one branch of these communities. The "Naviculariii" were under similar circumstances, and we may obtain a tolerably accurate idea of their situation by comparing them with the fishermen, who, anterior to the Conquest, were annexed to an Anglo-Saxon lordship, and who even now exist as prescriptive corporations[a].

Analogies between their employments and the fishermen, annexed as villeins to an Anglo-Saxon manor.

[a] Such as the twenty-four fishermen appurtenant to the Manor of Gorleston (Domesday, Suffolk, p. 283). The free fishermen and dredgers of the Manor and Hundred of Faversham are a corporation by prescription, holding their oyster-grounds of the Lord (8 Durnford and East, p. 352). The dredgers of Whitstable (now incorporated by statute) were originally of the same description. They also have held

Part I. Ch. X.

The custom of assigning lands as the recompense for various laborious or menial duties, which was practised amongst the Celts[a], still flourishes in Hindostan, and the Roman system appears to have been formed upon an ancient traditional system, greatly modified by more recent law. It is evident that the "Colleges" were not of a uniform constitution. Some were entirely grounded upon personal obligations; others, if we may borrow from our legal nomenclature, savoured of the reality; and the supposition that the Roman jurists, either willingly or inadvertently, forgot or confounded the primitive distinction, may partly account for the perplexed organization which the Colleges assumed.

Lands assigned upon condition of fulfilling certain employments (not being strictly agricultural) amongst the Celts of Ireland, and also in the Hindoo villages.

Law relating to the Roman "Colleges" probably modelled by the jurists.

However servile the condition of the members of these corporations may appear—and to the restrictions before enumerated, must be added the obligation of constantly residing within the jurisdiction of the city to which they belonged—they enjoyed very considerable privileges. It is established as a general principle by Gaius, that all Colleges lawfully constituted, and that of the Pistores (the Bakers) is one which he instances in particular, were to be considered as minor republics. Possessing a common property, and a common fund, they were empowered to regulate their own affairs by the enactment of by-laws, binding all the members of the community. And whilst they might avail themselves of the protection of a Defensor or patron, they also asserted their rights by the appointment of a perpetual Actor or Syndic, who represented them, without any special warrant, in all judicial proceedings and on public occasions. General meetings of the Colleges were held, distinct from the assembly of the municipal Curia of the Civitas[b]; and, allowing for the difference of rank in the political hierarchy, they seem to have stood in the same relation towards the Sovereign as the municipal corporations in which they were locally included[c]. By the doctrine that no

Members of the "Colleges" bound to reside within the banlieu of their city.

"Colleges" described by Gaius as minor republics.

Meetings of the "Colleges" distinct from the meetings of the Curia of the City.

their oyster-fishery as tenants under the Lord of the Manor from time immemorial (4 Maule and Selwyn, p. 53).

[a] Ware, p. 70.

[b] As at Lyons. Heineccius, xii.

[c] Cod. Theod., lib. xiii. tit. 5, de Navicullariis; tit. 6, de Prædiis Naviculariorum: lib. xiv. tit. 2, de Privilegiis Corporatorum urbis Romæ; tit. 3, de Pistoribus et Catabolensibus; tit. 4, de Suariis, Pecuariis et Susceptoribus vini; tit. 6, de Calcis Coctoribus; tit. 7, de Collegiatis; tit. 8, de Centonariis et Dendroforis, cæterisque Corporatis. Dig., lib. iii. tit. 4, Quod cujuscumque universitatis nomine

College could claim any legal privileges unless authorized by the state, they were rendered unobnoxious; but it is a remarkable circumstance that these associations had at various times become so dangerous to the ruling powers, whatever the political principles of the government might be, as to call for their suppression; equally had the same proscription been pronounced against the "Colleges" by the Senate, and the Dictator, and the Emperor. Yet, notwithstanding these abolitions, they appear again, and we can only conclude that, like the "Chapters and Congregations of Masons," in this country, they continued to meet in secret, though prohibited by law; until, at a more favourable season, they ventured to emerge from their concealment. The scheme of bringing all these bodies under a uniform subjection, may have been one reason for confounding the original distinction between the real and personal obligations of the two classes of the operative communities. The theory of the Jurist was adapted to the exigencies of the state; the Emperors yielded to the necessity which they could not control, and granted their sanction to assemblies which would have subsisted in a more mischievous form if they had refused their permission and denied the charter.

The Colleges prohibited, at various periods, as dangerous to the State (see above, p. 272, note b), but notwithstanding which prohibitions they appear to have continued to meet in secret: like the Masons in England, after the statute 3 Henry VI., by which their "Chapters and Congregations were forbidden."

Invested with powers of local administration, the Civitates were united into a regular, if not a powerful confederation, by the councils in which the provincials assembled for the purpose of treating upon their affairs and exigencies, and also to the end that they might obtain such redress and relief as could be afforded by the Sovereign. These Sessions were either ordinary, and held "de more" at a certain place, and on a fixed day[a],

Provincial councils, either ordinary, and held "de more," on a fixed day, and at a certain place; or extraordinary, and specially summoned by the governor.

vel contra eam agatur. [Theodosian Code, bk. xiii. tit. 5, of the Shipmen; tit. 6, of the Lands of the Shipmen: bk. xiv. tit. 2, of the Privileges of the Corporations of the town of Rome; tit. 3, of the Bakers and Muleteers; tit. 4, of the Swine-dealers, the Cattle-breeders, and the Contractors of wine; tit. 6, of the Limeburners; tit. 7, of the Members of the Corporations; tit. 8, of the Rag-dealers and Carpenters, and other Corporations. Digest, bk. iii. tit. 4, what action can be taken in the name of any corporation or against it.] These laws, the commentary of Gothofred, the treatises of Pancirollus and of Heineccius and Mr Spence's work, afford the authorities for the general view of the constitution of the Colleges.

[a] Tripolitani (al. Pentapolitani), adlapso legitimo die concilii, quod apud eos est annuum, Severum et Flaccianum creavere legatos, Ammian. Marcell., lib. xxviii. c. 6. [The Tripolitani (or Pentapolitani), as the

Part I. Ch. X.

without any special mandate or authority; or extraordinary, and convened pursuant to the letters or writs of summons issued by the Civil Governor when the Common Council was required by any sudden emergency. The laws appear to establish that the federative policy allowed of assemblies, either of the whole community or of any member thereof, and with equal privileges and facility. The Sovereign might be addressed by the Council or Senate of any single "Civitas," and such a council was composed of the "Curiales" or Decurions, though perhaps in some instances the colleges of operatives, appearing by their Syndics, may have assisted in its proceedings; and even a single Gild was equally empowered to meet, to deliberate apart from the Municipality. When an entire Province or an entire Diocese was called together, the Primates of the cities were the natural representatives of the municipalities to which they belonged, whilst the individuals who had filled Prætorian offices were allowed to depute proxies in their stead, to convey their individual opinions to the assembly of their fellow citizens. The minute particulars of this branch of government are imperfectly understood. A practical legislator consults the convenience of his contemporaries, not the instruction of posterity; the excerpts and fragments relating to the constitution of the Councils, contained in the Theodosian Code, were selected because they embodied some useful principle of general law, capable of being adopted as a universal canon of jurisprudence; whilst those which merely related to local customs and franchises, without affording any useful precedent or rule, were rejected from the compilation which they would have encumbered.

A council might be held either for the entire Diocese, or for any single Province of the Diocese, or for any single City of the Province.

Councils of the Provinces or Dioceses usually composed of the Primates of the cities (p. 271), and of individuals who had filled Prætorian offices (the latter of whom might act by proxy).

Difficulty of understanding the precise conformation of the Councils, the laws in the Theodosian Code having been selected for practical use, and not for the purpose of elucidating the constitution of the Empire: this deficiency partially supplied, as to Gaul, by the edict of Honorius (A.D. 418) reviving the meetings of the Concilium of the Seven Provinces held at Arles (previously regulated by the Prefect Petronius), but which had been discontinued in consequence of the calamities of the country.

Councils of Britain and Spain and the other Dioceses comprehended in the Prefecture of the Gauls, probably very similar to the Council of Arles.

An edict of Honorius[1], regulating the Convention of the "Seven Provinces" of Gaul, a Council which was held annually at Arles, fortunately furnishes us with details, which would have been misplaced in the law-book intended for the whole Empire; and the Constitution possessed by this opulent region may be reasonably considered as analogous to the government of the other Dioceses of the same Prefecture. From this document it appears that the Assemblies had been previously held by the Prefect Petronius, but that the accustomed Sessions had been interrupted by the calamitous invasions of the Barbarians. When revived by Honorius, the Bishops took their seats as the Fathers

lawful day of their council meeting had passed, which day is with them once a year, appointed Severus and Flaccianus to be legates.]

of the Church; their appearance in the Senate began to be deemed one of the duties which belonged to their functions, and, perhaps, as devolving upon them in consequence of the endowments of their sees. The Counts of the Provinces, the "Judices" of the Cities, and the "Honorati" or "Curiales," attended by virtue of their offices; but the distant provinces of Novempopulania and the Second Aquitaine supplied the places of the magistracy by special deputies. Lastly, certain of the "Possessores," or Landholders, were called to the Council; but the expressions indicating that their property was their qualification, do not enable us to discover the course pursued in selecting them from amongst the Estate to which they belonged[a]. Honorius appears to grant or confirm the privilege of legislation in matters relating to the concerns of the Province; and the representatives of the Cities, when united in one Chamber, probably possessed the same powers which belonged to each individual community within its own jurisdiction, extending to all regulations required for the internal administration of the country. And though we cannot suppose that any law was enacted at Arles, which would diminish the prerogatives of the Emperor, or interfere with the system of jurisprudence established in the Empire, still, the necessities of local government, and the "consulta" grounded upon local customs, would furnish sufficient business to give respectability to the authority which the Convention possessed. The Council of Arles constituted the Senate of the Seven Provinces: and we can discover that its members emulated the privileges of the conscript fathers of the Capitol. Avitus, after being saluted Augustus by the legions at Toulouse, was invested

Composed of the Bishops, the Counts of the Provinces, the "Judices" of the Cities, the "Honorati," or "Curiales," and the "Possessores," or Landholders.

Provinces of Novempopulania and Aquitania Secunda (Gascony, Poitou, &c.), allowed to supply the places of their Magistrates by special deputies.

Powers of local legislation possessed by the Council of Arles.

Council of Arles, considered as the Senate of the Seven Provinces.

Imperial dignity conferred by the Council upon Avitus (A.D. 455) after he had been saluted Emperor by the legions; in the same manner as practised in similar cases, by the Roman Senate.

[a] This edict, which has been also attributed to Constantine of Britain (v. Chap. XI.), was first published correctly by Father Sirmond, in his notes upon Sidonius Apollinaris. The substance of the decree is also given by Hincmar. It was promulgated A.D. 418 The Seven Provinces were the Viennensis, the Maritime Alps, the First and Second Narbonnese, Novempopulania, and the First and Second Aquitaine, and are nearly co-extensive with the "Langue d'oc" of modern France. De Marca (Marc. Hisp., p. 91) derives the name of the Gothic Septimania from the Seven Provinces. The Kingdom itself comprehended Aquitania and Novempopulania (Hist. de Languedoc, vol. i. note 57). It is singular that Gibbon (vol. v. c. 31) should have considered this assembly as having been created by Honorius, since the edict refers to the previous regulations of the Prefect Petronius. It is equally remarkable, that he has not taken any notice of the assemblies

Part I. Ch. X.

with the Imperial purple by the "Honorati" of Arles, and Rome and Italy submitted to the sway of the Emperor of Gaul[a].

Councils of the Seven Provinces, not suppressed after their separation from the Empire.

Nor did the importance of this Senate diminish with the revolutions which detached the Seven Provinces from the falling Empire. In an Assembly held at Toulouse[1] by the command of Alaric, the Bishops and "Electi" of Septimania, then ruled by the Gothic King, ratified that digest and interpretation of the Civil law, usually, though erroneously, known by the name of the Anian Breviary[2]. The draft had been first prepared by a committee or council of the most learned Jurists, both clerks and laymen, over whom the Chancellor Goaric was appointed President. The Code was then laid before the States, and having been discussed, examined, and ultimately adopted by them, it was transmitted to the various Cities and Tribunals, in which the revised jurisprudence was to be observed[b]. The importance and consideration of the Consilium may be estimated by this proceeding. Alaric was the conqueror of Roman Gaul, and the privileges of the vanquished could scarcely have been amplified by the Barbarian, who thus considered the Assembly as the legitimate Legislature of the people over whom he was called to rule, and whom he wished to govern according to their own law.

Alaric II. convenes the Bishops and "Electi" of Septimania (a Kingdom formed out of the Seven Provinces), at Toulouse, in which Assembly the laws by which Romans were thenceforth to be governed, were revised, glossed and re-enacted.

Draft of the Code (commonly called the Anian Breviary) prepared by a committee or council of Jurists, both clerks and laymen, presided over by the Chancellor Goaric; and then propounded to the Assembly of the States.

Plenitude of legislative prerogative vested in the Emperor, notwithstanding any power of legislation permitted to the Councils, so that in relation to the Sovereign, the ordinary duty of the Councils consisted in the presentation of petitions to the throne,

But whatever powers belonged to the Provincial States of the Roman Empire, they were subservient and subordinate to the Imperial prerogative. Admitting the "Lex Regia" to be the fiction of the obsequious jurist, it is, nevertheless, certain, that the Constitution vested the plenitude of legislative authority in the "Prince." When exercised by the Roman Senate, the power resulted only from his tacit permission: considered, therefore, in their dependent capacity, and in their relation towards

of the Provinces, though the laws relating to them fill an entire title in the Theodosian Code. No writer ever examined his authorities or investigated his sources of information with more care than Gibbon; and I only mention these omissions, in order that they may excuse the errors of those who possess less diligence and reputation.

[a] Sidon. Apoll., Paneg. Aviti. Marii Aventicensis Chron. ad An. 455. Idatii Chron. Dubos, vol. ii. ch. 20. Gibbon, vol. vi. ch. 36.

[b] Commonitorium Alarici ad Cod. Theod. Gothofr., Prol. c. 7. [Letter of Instructions of Alaric for the Theodosian code.] The "Electi" were the secular deputies of the Provinces. Hist. de Languedoc, vol. i. p. 241.

their common Sovereign, the ordinary duty of the Councils was the right of petitioning the Throne. If the people had to complain of any abuse; if they suffered under any oppression; if any indulgence was to be obtained from the benignity of the Emperor; if any amendment of the law was to be derived from his wisdom; they embodied their request in their "edicts" or "decrees," their "postulates," "petitions," or "desires." A legal meeting could not be held without the presence of two-thirds of the governing classes; and as the law directed that the instrument should be signed by all the members present, it seems that the entire unanimity of the assembly was required[a], a regulation, which, however inconvenient it may appear, has prevailed in modern times, not only in the warlike Diets of Poland, but in the States of the wealthy and pacific Netherlands.

for redress of abuses, for matters of grace and favour, or for the alteration or amendment of the laws.

The "Edicts," "Decrees," "Postulates," "Petitions," or "Desires," &c., after having been voted, transmitted to the Emperor by the Legates, or Representatives of the Province or Diocese, who were elected in and by the Council.

Authenticated in this manner, the record was deemed to express the sense of the community, and the Petition was then ready to be presented to the Sovereign by the Legates or Representatives. Two or three of the "Spectabiles viri" were usually elected for this purpose by the judgment or suffrages of the Council[b], who forthwith repaired to the Imperial presence, bearing the bills of their constituents. They travelled at the public expense; the magnificent roads, which traversed every part of the Empire, facilitated a mode of government which would have been scarcely practicable if art had not removed the obstacles presented by nature; and the highways which pierced the forest or levelled the mountain, in order that the legions might march against the enemy or the rebel, also enabled the inhabitants of the most distant cities to reach the capital with ease and expedition[c]. The Emperor received the deputies, who were introduced into his "sacred consistory" by the Chancellor. He considered their humble supplications; and, advising with the "Illustrious" Counts and Senators, whose counsel assisted him in the toils of government[d], he alleviated the public burdens, modified the defective jurisprudence, and extended his mercy or his beneficence to those by whom the boon was craved[e]. It appears that,

Facilities afforded by the excellence of the Roman roads and posts.

Representatives of the Provincials, how received by the Emperor.

[a] Cod. Theod., lib. xii. tit. 12, l. 15.

[b] Cod. Theod., lib. xii. tit. 1, l. 25.

[c] By the help also of the regular institution of posts, it was easy to travel a hundred miles a day along the Roman roads, Gibbon, vol. i. ch. 2.

[d] Cod. Theod., lib. l. tit. 3, de Metatis.

[e] Synesius, de Regno, p. 27.

Part I. Ch. X.

according to the regular course of the government, many of the rescripts concerning the Provinces were issued as answers to the addresses of the people[a]; and the law was called forth by the opinion of the Councils, who expressed the wishes of the Provinces, though this participation may be concealed by the authoritative language and imperial tone of the legislator. The Legates had also the power of impeachment. They carried up the complaints of the Provincials against a guilty or an obnoxious Governor, and if the accusation was admitted by the Emperor or the Senate[b], the delinquent was tried upon their denunciation.

Rescripts issued upon their petitions, though such petitions are not always set forth or stated in the law which was grounded upon them.

Power of impeachment possessed by the representatives of the Councils.

Much anxiety is ostensibly displayed in the laws, for insuring the honest and unbiassed deliberations of the Council, and for promoting its political independence and welfare. It was to be held in the most opulent and central town of the province, and in

Regulations for insuring the unbiassed deliberations of the Councils.

[a] As may be instanced by the following quotations:—Dig., lib. xlvii. tit. 14, l. 1, de Abigeis. Divus Hadrianus ad consilium Beticæ rescripsit, &c. [Of Cattle-stealers. The divine Hadrian wrote to the council of Bætica, &c.] Cod. Theod., lib. xi. tit. 30, l. 15, de recipiendis appellationibus, &c. Notandum id primo, latam hanc legem a Constantino Magno, ad querelam seu querimoniam Africanorum qui pro more in concilium coacti, decretis conditis, legatisque ad Constantinum missis, et hoc querelarum caput suarum esse voluerunt. Ideo hæc lex inscribitur *ad concilium provinciæ Africæ*. Ideo rursum in subscriptione dicitur, hæc lex, *proposita Carthagine*, quæ metropolis Africæ fuit. [Concerning the reception of appeals. It must be noted, first, that this law was made by Constantine the Great, at the complaint of the Africans, who, according to their custom, collected in council, and having made decrees, and sent legates to Constantine, wished this to be the chief of their complaints. Therefore this law is addressed *to the council of the province of Africa*. So again, in the subscription, it is said that this law was made *on the proposition of Carthage*, which is the Metropolis of Africa.] For the legation of the Argives, see Julian, Ep. 35. Cod. Theod., lib. xii. tit. 1, l. 96, de plebeiis idoneis ad Curiam in Mysia vocandis [for summoning suitable plebeians to the Council in Mysia]; being a rescript issued by Gratian, Valentinian and Theodosius, in answer to the "Desiderium" of the province of Mysia. Cod. Theod., lib. xi. tit. 7, l. 17, Honorius and Theodosius, acting upon the legation of the Achæans, as mentioned in the revocation of the rescript (l. 18.), though not in the rescript itself (see p. 284, note a).

[b] Sidon. Apoll., lib. i. Ep. 7.

a public building, or in the Forum, to which all could resort; and these precautions were adopted lest any manœuvre or intrigue might enable a few individuals to usurp the privileges which belonged to the entire body[a]. Freedom of debate was secured or promised to the Council; and the Magistrate who presumed to oppose or influence the deliberations of the Assembly, incurred a severe censure or reprimand. After the close of the sitting, the petition was in no wise to be altered or abridged; the sentiments of the people were to be conveyed in their own language; and the instrument which testified the wishes of the Provincials was to be faithfully transmitted, in its original state, to the Prefect, with whom it continued in deposit until the Legates proceeded to the Emperor[b]. Lastly, that full attendance so indispensably necessary to bestow importance upon a national assembly, is strictly enjoined; and the heavy fine of five pounds of gold, imposed upon the member of the Council of Arles who neglected to appear in his place, may be considered as a specimen of the special regulations which were grounded upon the general law.

Freedom of debate.

Petition not to be altered, but to be delivered in its original state to the Prefect, with whom it was deposited until the Legates proceeded to the Emperor.

Fines for non-attendance.

Under the Roman Constitution, the Provincial Councils were composed of Notables, and of virtual, if not of actual, representatives of the people. But if the Legates, who might be deputed not only by a Diocese[1] or by a Province, but by any one single city, or single Corporation or College of Operatives[c], had repaired simultaneously to the capital, these representatives of the communities would soon have become the States General of the Roman Empire. The revolutions of the Middle Ages would have been anticipated; and the uncontrolled autocracy of the Emperor would have been transformed into a limited monarchy. This tendency, indeed, seems to have become manifest; and the instructions addressed by Theodosius and his colleagues to the Prefect of the East, evidently betray an uneasy suspicion of the consequences likely to ensue from the growth and consolidation of institutions, which it was expedient to check, whilst they were

Councils composed of Notables, and of virtual representatives of the people.

Tendency of the Provincial Legations to coalesce into a representative assembly, which might have become the States General of the Roman Empire, and by which the Empire would have been converted into a limited monarchy, like the Kingdoms of the Middle Ages.

Such tendency foreseen by Theodosius, who makes laws for diminishing the number of the Provincial Representatives.

[a] Cod. Theod., lib. xii. tit. 12, l. 1: lib. x. tit. 12, l. 13.

[b] Cod. Theod., lib. xii. tit. 12, l. 4.

[c] Cod. Theod., lib. xiii. tit. 6, l. 1, Constantius ad decretum Naviculariorum. [Constantius on the decree concerning the Boatmen.] Cod. Theod., lib. x. tit. 10, l. 19, Valentinianus, Theod. et Arcad. ad legationem Senatus Alexandrini. [Valentinian, Theodosius and Arcadius to the legation of the Senate of Alexandria.]

Part I. Ch. X.

yet unable to dispute the mandates of the Sovereign. The cities are enjoined to desist from sending their peculiar Legates, and they are directed to assemble or hold their "Conventus," and to despatch their petitions by two or three Legates for the entire Province[a]. But this precaution was not sufficient to allay the apprehensions which were felt in the Imperial consistory; and from another rescript, dated two years afterwards, we collect that one or two Legates on behalf of the entire Diocese would be more welcome to the Emperor than the two or three Legates from each of the several Provinces of which it was composed[b].

The object of these regulations cannot be mistaken; and the secret sentiments of the monarch may be discovered beneath the veil of the law. By reducing the number of the Legates, the Imperial court diminished the chances of their aggregating, either by accident or design, into a known and visible body. Popular rights can never be asserted with success, otherwise than by the recognized union of those in whom the privileges are vested. And the dutiful request, which no wearer of the purple could have refused to the loud-voiced multitude of humble petitioners convened in the Basilica or the Hippodrome, might be easily eluded or denied when it emanated from the deputations of submissive courtiers, scarcely discernible amidst the thronged halls of the sacred palace.

Causes which assisted in preventing any increase of the power of the Provincial Councils.

In the Provinces, other restraints existed, by which their privileges were prevented from expanding into any form inconsistent with the principles of a government, founded upon the theory that all the powers of the State were concentrated in the person of the Sovereign. Respectable as the Provincial Councils may appear, their efficacy was grievously diminished by the veto of the Prætorian Prefect. This high officer was charged to

[a] Cod. Theod., lib. xii. tit. 12, l. 7, Grat. Valentin. et Theod. de numero legatorum, dat. ix. cal. Aug. Constp. Grat. V. et Theod. I., A.A. Conss. (A.D. 380.) [Gratian, Valentinian and Theodosius concerning the number of legates, given at Constantinople the 24th July, in the fifth consulship of Gratian and the first of Theodosius. A.D. 380.]

[b] Cod. Theod., lib. xii. tit. 12, l. 9, Grat. Val. et Theod. ad Provinciales, dat. vi. id. Maii, Brixiæ, Antonio et Syagrio Conss. (A.D. 382.) [Gratian, Valentinian and Theodosius to the Provincials; given the 10th May, at Brescia, in the consulship of Antonius and Syagrius. A.D. 382.]

examine and peruse the proceedings when they were drawn up and authenticated, and before they were delivered to the Legates who bore them to the throne. The same rescript which insured the free right of petitioning, also authorized the Prefect to "correct" the document, in order that no improper or insolent request might disturb the tranquillity or offend the majesty of the Emperor; and the penalty of discharging their own travelling expenses was probably the lightest of the punishments which awaited the Legates, who, whether by the negligence or false judgment of the Prefect, were the unlucky bearers of an unwelcome message or an unreasonable demand[a]. A petition supposes that the party to whom it is presented has the full power of refusing the prayer, without check, restriction, or hesitation. It is true, as we well know, that there are ways and means of rendering the decent language of supplication equivalent to a mandate, which can only be rejected with inconvenience or danger. But the entreaties or remonstrances of the Provincials were destitute of any such collateral aids. If dissatisfied, the Councils had no weapons of annoyance except those which were to be found in the perilous armoury of open rebellion. If conciliated, they had no effectual means of testifying their gratitude for the past, or of encouraging the opportunities which would enable them to repeat their welcome tokens of thankfulness at a future period. A statue or an inscription, an address or a poem, constituted almost all that they could bestow, in return for the acts of grace bestowed upon them, or for the justice they obtained; and an impeachment, under the control of the Prefect, was the only branch of judicature which they possessed.

Veto of the Prefect, who was entitled to "correct" the petitions, or to expunge any matter which might be disagreeable to the Emperor.

Provincials not enabled, like the English Parliament, to command obedience to their petitions, either by propitiating or annoying the Sovereign.

Councils, destitute of the power of judicature.

With the very dubious exception, if indeed it can be considered as an exception, of the "Aurum coronarium," a benevolence granted in the Provincial Councils, voluntary and arbitrary according to law, but permanent and immutable by custom[b], taxation resulted from the uncontrolled pleasure of the Emperor; he sent forth the decree, and his indiction imposed the heavy tribute which was wrung from the impoverished people. They were not consulted; they were not spared. The dungeons might be filled with the debtors of the state, the farm, abandoned by the cultivators; but the complaints of the "Honorati" afforded no protection against the fiscal rapacity and exaction which

Taxes imposed by the Emperor, without the concurrence of the Councils, the "Aurum coronarium" only excepted, which was voted by them, and which in theory was a voluntary benevolence, though in practice it could not be refused.

[a] Cod. Theod., lib. xii. tit. 12, ll. 1, 3.

[b] Cod. Theod., lib. xii. tit. 14, de Auro Coronario.

Part I. Ch. X.

hastened the downfall of the Roman authority. Nor could their legislative powers protect them in the slightest degree against the despotism of the monarch or the monarch's officers or ministers; since the law enacted upon the petition of the Council might be rescinded at any time, by the advice of the Counts of the Imperial consistory, or by the absolute will of the Sovereign[a].

Laws enacted upon the petitions of the Provincials could be repealed at any time by the mere motion of the Emperor, whose power of legislation was undiminished and uncontrolled.

The Constitution of the Provinces appears, in many cases, to have been ingrafted upon older institutions. Rome endeavoured, and with success, to break down and crush any internal forms of government militating against her supremacy. But her early policy induced her to disguise the yoke which she imposed. It was a generous, and therefore a wise maxim of the Romans, to allow their subjects to retain their national laws and customs, so far as was consistent with their subordinate station; and, unless when resistance or rebellion drew down punishment, it does not appear that the original constitutions were obliterated or destroyed, whatever modifications they may have received or adopted from the ruling power.

Provincial Assemblies, in many instances, to be considered as the ancient national governments which had been partly remodelled by the Romans.

Federative governments of the Greeks continued or revived by the Romans.

Subjugated by the Generals of the Republic, the federative governments of the Hellenic nations were respected or restored by the Cæsars. Their political power was certainly lost. Neither peace nor war could be offered or declared by them; their attributes of sovereignty had disappeared; yet they did not exist merely in name. Lycia and Lycaonia, electing their governors and commanders, were perhaps, more free than Rome, who accepted her Consuls from the nomination of the Emperor. The Galatian confederacy subsisted, though incorporated in the Empire. Cæsar presided in the conventions of Gaul; and Augustus summoned the Assembly at Narbonne, in which regulations were enacted for the purpose of restoring good order in the country, so long desolated by war[b]. These Senates replaced the older national councils, performing such functions as could be retained by a dependent legislature. They held the same situation in the State; and we may, without difficulty, assent to

(See above, pp. 87, 88.)

Conventions or General Assembly of the Gauls held by Augustus.

Council of Arles, formed by the continuance of these assemblies, and not by the gift or creation of Honorius.

[a] Cod. Theod., lib. xi. tit. 7, l. 18, revoking the preceding law, therein stated to have been issued, "intempestiva admonitione legatorum Achivorum" [on the untimely advice of the legates of the Greeks].

[b] Strabo, vii.–xiv. Pausan., lib. vii. Dion., lib. liv. Liv., epit., lib. cxxxiv. Gibbon, vol. i. c. 2. St. Foix, p. 158, &c. Sigonius, de Ant. Jure Provinc., lib. ii. c. 10.

the theories of those historians[a] who assume, that the edict of Honorius was grounded upon the original constitution of Roman Gaul.

Objections to this assertion, considered and answered.

Against this supposition, which has been discountenanced by later writers, the main, if not the only difficulties which can be raised, arise from the silence of historians, and from the expressions employed by Honorius, implying that this constitution emanated from his mere motion and imperial authority. But we may attempt to answer these objections without having recourse to any extravagant conjectures. Deprived of political power, the transactions of the Provincial Assemblies did not offer any subject for the general historian. Even if we possessed the complete annals of the Empire, instead of a few scattered fragments, we could scarcely expect more than incidental notices of their proceedings; and at a period, and in countries where they existed in full vigour, we only ascertain their existence from the letter casually addressed to a friend, or from the descriptions of the topographer[b]. The language of the Emperor is equally inconclusive. The Assemblies had been interrupted, and it might appear advisable to place the Consilium of Arles upon a new basis. Unquestionably, great changes had taken place; and the innovations which arose at Rome or Constantinople would necessarily produce a corresponding aspect in the provinces. Not amongst the least important of the circumstances which occasioned an alteration in the forms of the Councils, were the relations resulting from the establishment of Christianity. The introduction of the Bishops into the Assembly would impart a new character to the Senate, in which they constituted a new order, distinguished by personal privileges separating them from the other members. Any variation in the time, the place, or the mode of the meeting would be sufficient, according to the style of the imperial chancery, to satisfy the phrases which appear to describe the Council as the invention of the Prefect or the gift of the Emperor, even if we could not adduce many parallel examples in which the confirmation of an established privilege, already possessed by the people, is described as the grant of a franchise, proceeding solely from the monarch's authority.

Alterations produced by the establishment of Christianity, and the introduction of the Prelates into the Secular Councils.

[a] Dubos, vol. i. c. 4. Hist. de Languedoc, vol. i. p. 175.

[b] As in Asia Minor, from the Epistles of Cicero ad Attic., lib. v. 1, 20, 21; Pliny, lib. v. c. 29; Strabo and Pausanias as before quoted; and in Spain, from Pliny, lib. iii. c. 1 and 3.

Where any regular municipal or federative government had existed, as in Greece or in Gaul, it seems to have been Romanized, and considered, in constitutional language, as the Consilium of the City, the Province, or the Diocese. If no such Senates were found, it is evident that the Emperors created similar assemblies; otherwise, we have no mode of accounting for their appearance in provinces the most distant from each other, and amongst nations the least connected by origin or policy; in Spain and in Mysia; at Arles and at Alexandria; at Tripoli and at Carthage; diversified no doubt, by customs and usages, by manners and religion, by the vestiges of ancient institutions which they had retained, and by the alterations resulting from the rescripts or decrees issued upon sudden emergencies or occasions; yet all so treated by the supreme legislature, as to shew that none of these minor shades of difference were sufficient to destroy the general conformity which prevailed throughout the Empire.

Differences arising from local customs not sufficiently extensive to disturb the general scheme or *platform* of the Roman Provincial Constitution.

When we arrive at the Diocese of Britain, our sources of information become more scanty and obscure. The names of the five or the six provinces into which it was divided, Maxima Cæsariensis and Valentia, Britannia Prima, Britannia Secunda, and Flavia Cæsariensis, have been transmitted to us, and perhaps the dubious Vespasiana ought to be added to their number[a].

Britain: Provinces into which the Diocese was divided.

Paucity of information relating to the Roman administration in Britain, the

[a] The boundaries of the Roman provinces are open to some discussion. According to the most probable hypothesis, Britannia Prima comprehended the district south of Thames and Severn; or Kent, and the kingdoms of Wessex and the South Saxons. Britannia Secunda included Gwynedd, Deheubarth, and Powys, or modern Wales and the Marches. Flavia Cæsariensis extended from the Thames to the Humber; Maxima Cæsariensis, from the Humber to the Wall of Severus; and Valentia from thence to the Firths of Forth and Clyde. These five Provinces are represented by five castles placed upon the island, in the insignia of the Vicar of Britain. Maxima Cæsariensis and Valentia were governed by "Consulares," and the others by "Præsides." (Notitia, c. lxix. Horsley, p. 475.) The existence of Vespasiana, the sixth province, rests upon the authority of Richard of Cirencester[1]; and if we could rely upon the authenticity of the treatise ascribed to him, we should gladly adopt the information connected with the topography of Roman Britain, which cannot now be found in any other work. Whether this production, however, is to be considered as an ingenious forgery, or as a genuine production of antiquity, is a question which is yet *sub judice*. A work, of which no manuscript is known, transmitted in parcel-transcripts by an obscure

The establishments of their Governors, the Vicar of Britain and the "Consulares" and "Præsides," by whom the British Provinces were ruled, are recorded in the notices of the Empire, and the Itineraries indicate the relative position of the fortified stations and cities raised by the Roman power. These afford an ample, yet an arid nomenclature; and whilst the opulent provinces of the East called so frequently for the care of the legislator, the bulky code of Theodosius contains but a single rescript concerning Britain. This document, however, informs us that, in the Diocese of Pacatian, the Decurions of the Cities existed as in the other parts of the Empire[a]; and some votive inscriptions, which still remain in spite of the ravages of the ignorant and the neglect of the learned, indicate the privileges of the British Corporations or "Colleges" of Operatives, and attest the authority possessed by Cogidumnus[b] under the supremacy of the Cæsar.

Theodosian Code containing only a single rescript concerning Britain, but which establishes the fact of the Municipal Corporations existing on the same plan as in the other parts of the Empire.

Inscriptions evidencing the subsistence of the authority of Cogidumnus (see above, p. 265) as a vassal king, and that the "Colleges" of Operatives were established in his dominions according to the Roman law.

individual at Copenhagen, to Stukeley, the most zealous, the most credulous and the most injudicious of English antiquaries, bears but a dubious aspect; and although diligent inquiry has been made in Denmark for the codex whence Bertram may have taken his supposed copy, no traces of it can be discovered. The general elegance of the style, and the extraordinary knowledge of antiquity displayed by this Monk of the fourteenth century, are circumstances considered by some writers as internal evidence of fabrication. The author, or supposed author, says, that his Itinerary was principally collected ex fragmentis quibusdam, a Duce quondam Romano consignatis, et posteritati relictis [from certain fragments, formerly recorded by a Roman General, and left to posterity]; and as these materials cannot be discovered, the quotation of the authorities has been deemed to be a fiction. It is remarkable, however, that the editio princeps of the "Notitia" was printed from a manuscript, found, as Pancirollus informs us, "in ultimis Britanniis" (Præf. p. 3) [in the furthest parts of Britain]. And when we recollect the great destruction of manuscripts at the Reformation, the mere non-appearance, at the present day, of the fragments ascribed to the Roman general, is not implicitly to be received as a proof that they were never accessible to the ostensible compiler.

[a] Cod. Theod., lib. ii. tit. 7, l. 2, Imp. Constantinus ad Pacatianum, Vicar. Britanniarum.

[b] As proved by the most valuable of these monuments, the inscription[1] found at Chichester, commemorating the dedication of a temple to Minerva and Neptune by the "[Colle]gium Fabrorum, [ex] auctoritate Ti. Claud. [Co]gidubni R(egis)" [the College of Smiths,

Part I. Ch. X.

We cannot add to these slight, though distinct notices of the municipal governments and general assemblies of Britain: we cannot determine their plan of meeting, enumerate their members, or define their privileges. Yet, as the fragments of the capital and the mutilated cornice enable us to judge that the Forum of "Aquæ Solis"[1] was surrounded by edifices, erected according to the rules which were exemplified at Trèves or Arles; so, with an equal degree of moral certainty, we are enabled to reconstruct the fabric of the state from the vestiges of institutions which formed part of a consistent and uniform plan. And we have no reason to doubt but that the conventions of the British States, whether of the Provinces or of the Diocese, agreed, in all material points, with the other Councils of the Prefecture of the Gauls, and that they possessed the same conformation and the same franchises.

Councils of Roman Britain analogous to the other Councils of the Prefecture of the Gauls (see above, pp. 276, 277).

Such were the Roman Provinces in relation to their civil government. Coeval with this scheme of administration was the full development of the system which created a distinct "Estate," composed of a population separated from their fellow-citizens by their duties no less than by their immunities, and holding their lands by military tenure. Territorial grants made to the Roman warriors in consideration of the services which they had performed[a], are not strictly comprehended in this description, though they may have contributed to suggest the policy of rewarding the soldier by assigning to him the property of the soil which his sword had conquered. Sylla[2] practised this mode of remuneration[b]; and the lands of the "Civitates" whose inhabitants had adhered to

Military government of the Provinces. "Estate" of the soldiery, holding lands upon condition of performing military service.

This practice reduced into a system by Sylla, and much extended under the Triumvirate.

under the authority of Tiberius Claudius, of King Cogidubnus], published by Horsley, and which has been the subject of a learned and ample commentary. (Brit. Rom. p. 337.) The altars at Middleby also notice a "Collegium Ligniferorum" [College of Wood Carriers]. (Brit. Rom. p. 342.) If any reasonable care were exerted for the preservation of the Roman monuments of Britain, it is probable that many important facts would be ascertained. Yet, with the honourable exception of one provincial Society (the Antiquaries of Newcastle), none of our museums will house them. I have heard it observed, that they are rude, and of no value as "works of art." Be it so. But every inscription is to be considered the leaf of a book, which, if it records only a single name, affords information which may be of the greatest use to the historical inquirer.

[a] Liv., lib. xxx. c. 4 and 49.

[b] Dolabella, de Limitibus, p. 297.

Marius, became the endowment of the victors in the unnatural conflict between Roman and Roman[a]. Under the Triumvirate[1] the policy which purchased military support at the expense of an opponent, who was thereby impoverished and despoiled, received a still wider application. Eighteen of the most flourishing colonies of Italy were included in the proscription. Their lands were distributed to the "Veterans who revenged the death of Cæsar, and oppressed the liberty of their country[b]"; and the decree which compelled the Mantuan Bard to abandon the farms of his ancestor, and to surrender his little field to the insulting stranger, was deplored by him in strains which might have been echoed in the complaints of an Anglo-Saxon, yielding possession to the followers of the Conqueror. Augustus is particularly noticed as having made similar dotations in the Provinces[c]. And since such rigour was practised by the Romans towards their fellow-citizens, it can scarcely excite surprise that the same harsh measures were adopted towards a barbarian enemy. The grant of Camulodunum to the veterans who were to awe the turbulent Trinobantes[2] and Iceni[d] is, in comparison, an act of mild and justifiable policy; and if only nine of these Military Settlements were created in Britain, the natives might feel grateful for the clemency which they experienced from their new masters.

Lands of the inhabitants of the Italian cities confiscated, and re-granted to the veteran soldiery.

British territories granted in the same manner to the Roman soldiery (see above, p. 262).

In settling upon the soil, the military bodies were at first unbroken. The troops marched in with their standards, and the soldiers of the legion became the inhabitants of the city[e]. But

[a] Liv., Epit., lib. lxxxix. Sallust., Catil., c. 11. Beaufort, vol. ii. p. 243.

[b] Gibbon, vol. v. c. 31. Virg., Ecl. 9. Comm. of Servius.

[c] Divus Augustus in assignata orbi terrarum pace, exercitus qui sub Antonio aut Lepido militaverat pariter et suarum legionum milites colonos fecit, alios in Italia, alios in Provinciis, Hyginus, de Limitibus, p. 160. [The late Augustus, in establishing peace throughout the whole world, made colonists alike of the soldiers of the army which served under Antonius or Lepidus and of those of his own legions, some in Italy, and others in the Provinces, Hyginus, Concerning Boundary-lines.]

[d] Tacitus, Agricola, c. 15, 16: Annales, lib. xiv. c. 31.

[e] Hyginus, de Castrametatione. [Hyginus, Concerning laying out a camp.] Tacitus, Annales, lib. xiv. c. 27. Tacitus, after describing the ancient custom, describes the failure of some colonies which were founded by a mixed multitude of soldiery, taken indiscriminately from various bodies. Beaufort and others, following him, suppose,

Part I. Ch. X.

the foundation of these colonies was gradually discontinued. The interior of the subjugated Provinces no longer required to be awed by the fear of military execution; yet the danger was not lessened, though its scene was removed. The borders were threatened by the Barbarians, the destined successors of the Cæsars; and to repress their incursions, the March lands which were gained from the enemy were granted by Alexander Severus, and afterwards by Probus, to the Limitanean[1] or Riparian[2] soldiery[a], upon conditions, well described as containing the germ of the feudal tenures of the middle ages[b], and which appear to have been adopted as the basis of the defensive system of the Empire. The valleys and passes of the mountains were peopled by the soldiery, who raised the leader to the Imperial dignity, or deprived him of power and life; whilst the fertile banks of the great frontier rivers were tilled by the martial husbandmen, who could only secure their harvests by warding off the incursions of the enemy. To the barriers formed by rock or flood, were added the artificial fortifications afforded by long practised skill

Feudal tenures, their origin to be traced to the grants made to the Limitanean or Riparian soldiery.

Alexander Severus (A.D. 222) and Probus (A.D. 276) adopt the system upon an extended scale; lands so granted descendible to male heirs only, and not alienable.

Fortified posts and stations of the Limitanean countries; "Castella" and "Burgi."

from this passage, that the older practice was entirely discontinued; but Tacitus only speaks of particular instances, and not of a general usage.

[a] Sola quæ de hostibus capta sunt limitaneis ducibus et militibus donavit: ita ut eorum ita essent, si hæredes illorum militarent, nec unquam ad privatos pertinerent, dicens, attentius eos militaturos si etiam sua rura defenderent. Addidit sanè his et animalia et servos, ut possent colere quod acceperant, Lamprid., Alex. Sev., 58. [The lands, which were taken from the enemy, he gave to the officers and soldiers of the marches as their own property, only on condition that their heirs should do military service, and that the lands should never belong to civilians, as he said, that they would pay more heed to their military duties if they were actually defending their own lands. Moreover, he added to the lands animals and slaves, so that they could till what they had received, Lampridius, Life of Alexander Severus.] Barbarorum qui apud Isauras sunt, vel per terrorem vel per voluntatem loca ingressus est.... Veteranis omnia illa quæ angustè adeuntur loca privata donavit, addens ut eorum filii ab anno octavodecimo, mares duntaxat ad militiam mitterentur, Vopiscus, Probus, c. 16. [He entered upon the territory of the Barbarians in Isauria, with the acquiescence of some and terrorizing the others. To his veterans he granted for their own all the districts of the mountain passes, on condition that their male children should be put to military service from their eighteenth year, Vopiscus, Life of Probus.]

[b] Gibbon, vol. iii. c. 17.

and science. Such were the Roman ramparts, with their appendant stations, traversing this island from shore to shore; or the more extensive lines of walled towns, and castles and towers, which guarded the banks of the Rhine, from the Rhetian Alps to the mouths, now choked with sands, by which its waters anciently flowed into the North Sea[a]. In many of these strongholds, the regular masonry and firm and solid arches of the Roman architect may yet be discerned, amidst the Gothic dungeons and bartisans raised upon their ruins by the feudal barons of the German Empire. The name of the Teutonic "Burgh" is derived from the term by which the Romans designated the fabric upon which it is founded[b]. And if the deductions of the etymologist can be adopted by the historian, he must believe that every permanent mode of defence, except the rude earthen dyke and the stockade of timber, was borrowed by our western barbarians from the

Roman walls in Britain (see below, p. 294).

Roman castles upon the Rhine, repaired and enlarged in the Middle Ages, as at Heidelberg, &c.

The Teutonic term "Burgh" derived from the Latin "Burgus."

Terms applied by the Celts and Teutons to fortifications of brick or stone, equally derived from the Latin language

[a] These were founded, or perhaps repaired and strengthened by Valentinian, A.D. 369. Rhenum omnem a Rhætiarum exordio usque ad fretalem oceanum magnis molibus communiebat, castra extollens altius et castella, turresque assiduas per habiles locos et opportunos, quà Galliarum extenditur longitudo, Ammian. Marcell., lib. xxviii. c. 2. [He fortified with great works the whole of the Rhine from its source in the Rhætian Alps to the English Channel, making camps and castles higher, and raising frequent towers in convenient and suitable places, where the river bounds Gaul.] A law of this emperor notices the "Comites et Duces, quibus Rheni est mandata custodia," Cod. Theod., lib. vii. tit. 1, l. 9. [The Counts and Generals to whom is committed the guarding of the Rhine.]

[b] From Πύργος, or "*Burgus*," whence the corresponding terms in the Teutonic dialects *Baurgs* (Goth.), *Burg*, *burh* (A.S.), *Burg* (Alem.), *Borg* (Suio-Goth.) are all derived. *Mur* (Irish, Welsh, and Anglo-Saxon), *Mauer* (Teut.), *Gwal* (Welsh), *Weall* (A.S.), are equally referable to *Murus* and *Vallum*. Zosimus (lib. ii.) blames Constantine for withdrawing the troops from the frontier Castles and Burghs and placing them in the interior of the country. This does not imply that he altered the tenure of the lands held by the military, though he caused the Tenants to be stationed at a distance from their property. If any deviation from the original course took place in this reign, it was restored by subsequent Emperors. The term Πυργοκάστελλον was adopted in the East (Procop., de Ædificiis, lib. ii. c. 8); and the use of this compound designation in Britain, is proved from the name of "Burgh Castle," (Suffolk) by which the Roman walls of *Garianonum* are denominated at the present day.

Part I. Ch. X.

nations who spoke the Latin tongue. To each "Burgus" or "Castellum" a territory was annexed, shared, like other portions of the adjoining country, amongst the military, but who, in this case, were distinguished either as "Milites Castellani," or as "Burgarii," in consequence of their peculiar tenure.

"Milites Castellani," and "Burgarii" ("Burhware," or Burgesses), the soldiers stationed in the Castles and Burghs, and holding the adjoining lands.

Long before the outward decline of their power, the Romans adopted the dubious policy of assigning land to the Barbarians, who received the gift upon condition of performing military duties as the auxiliaries of the legions. At first, these donations were made at the expense of other Barbarians; but in the reign of Diocletian, the "Leod[a]" or People, as they were emphatically called, both by themselves and the Romans, were domiciled in the heart of the Empire, upon the "Lætic" lands, of which, according to law, they received possession by the writ or rescript of the Emperor. The fairest provinces were interspersed with these Lætic Colonies. The first invasions of Gaul by the Franks and their confederates, in the reigns of Aurelian and of Tacitus, were thus speedily followed by the establishment of the enemy in the dominions which they ravaged. Seventy States had been occupied by them; and the florid phrases of the panegyrist disclose the humiliating fact, that, after an obstinate struggle, these formidable Vassals accepted the fertile territories surrounding the cities of Amiens, Beauvais, Cambray, Trèves, Langres and Troyes, as the price of their dangerous aid and precarious fidelity[b]. There, the "Guests" of the Romans lived

Lands granted by the Romans to the Barbarian *Læti* (i.e. *Leute*, or *Leod*, see above, p. 82) upon condition of performing military service.

A.D. 241–276. Franks, their first invasion of Gaul under Aurelian and Tacitus.

A.D. 291. Territories ceded to the Franks, which they accept as *Læti*, or feudatories of the Empire,

[a] Cod. Theod., lib. xiii. tit. 11, c. 3. Cum quidam e gentibus Barbaris sponte Romanum in solum transibant, terræ eis eorumque progeniei desertæ excolendæ dabantur; et ut illi coloni *Læti*, sic terræ quas colerent *Læticæ* dicebantur....Et ea tamen conditione terras illas excolendas Læti consequebantur, ut delectibus quoque obnoxii essent et legionibus insererentur, Gothof. ad Cod. Theod., lib. vii. tit. 20, l. 12. [When some of the Barbarians crossed of their own free will into Roman soil, deserted lands were given to them and their children to be cultivated; and as those settlers were called *Læti*, so the lands which they cultivated were called *Lætic*....And moreover the Læti obtained those lands for their cultivation on this condition that they should be liable to the levy and should serve in the legions.] A portion of the lands so granted may have been really wasted by war; but the common lands of the Celtic tribes furnished material for these Barbarian settlements, as well as for the dotations of the Veterans.

[b] Vopiscus, Probus, c. 13. Itaque sicut pridem tuo, Diocletiane Auguste, jussu, deserta Thraciæ translatis incolis Asia complevit sicut,

apart from the other inhabitants in distinct communities, owing obedience to their own Chieftains, who themselves were mesne-lords, subordinate to the general military administration of the Empire.

where they lived apart from the other inhabitants, under their own Chiefs.

The term "Læti" appears most generally and most properly applied to the nations of Teutonic race. In Britain there is no official document which shews that the various Barbarian Auxiliaries were expressly designated by this word; but they were comprehended under the equivalent name of "Gentiles," and the same system had been pursued without interruption. A large body of Vandals obtained a settlement here, after their defeat by Probus. The Quadi and the Marcomanni, whose runes are amongst the earliest which are known, were rewarded by the grant of lands in Britain. Under Arcadius and Honorius, upwards of forty cohorts, of Barbarian lineage, some deriving their remote ancestry from the most distant parts of the Roman world, were

Vandals, Marcomanni, and Quadi settled in Britain.

Upwards of forty cohorts of Barbarian Auxiliaries in the northern districts, principally near the Roman walls.

postea tuo, Maximiane Auguste, nutu, Nerviorum et Treverorum arva jacentia Lætus postliminio restitutus, et receptus in leges Francus excoluit; ita nunc per victorias tuas, Constanti, Cæsar invicte, quiquid infrequens Ambiano et Bellovaco et Tricassino solo Lingonicoque restabat, Barbaro cultore revirescit, Eumen. Panegyr., Constant., iv. 21. [And so, as formerly, at thy order, O Diocletian Augustus, Asia filled up the deserted lands of Thrace by transferring its inhabitants, as afterwards, at thy will, O Maximianus Augustus, the Læt, restored (to citizenship) by his return, and the Frank, received into our laws, cultivated the vacant lands of the Nervii and Treveri, so now by thy victories, O Constantius, thou unconquered Cæsar, whatever remained deserted at Amiens and Beauvais and Troyes and on the soil of Langres, blooms again under the Barbarian cultivator, Eumenius, Panegyrist, Constantius.] The reading of the original text was "Baro" or "Barro cultore"; —"Barbaro" is the emendation of Gruter. I have not been able to discover the authority upon which Gibbon (vol. ii. c. 13), in his interpretation of this passage, has made the strange assertion, that the Franks exchanged death for *slavery*. But it may be observed, that amidst the vast multiplicity of subjects embraced by his history, Gibbon has lost sight of the true position of the Barbarians in the Roman Provinces and amongst the Roman people. There was a settlement of the Frankish Læti at Rennes (Præfectus Lætorum Francorum Redonas, Lugdunensis tertiæ, Notit. Imp., c. 90) [the Prefect of the Frankish Læti at Rennes, in the third province of Lyons]; but all the Teutonic Læti, who peopled the northern provinces of Gaul, might be comprehended in the collective name of Franks.

Part I. Ch. X.

naturalized in the northern provinces of the island[a]; and the progeny of the Tungrians, who warred against Galgacus[b1], became the guardians as well as the cultivators of the Caledonian wilds. Three mighty bulwarks, extending from sea to sea, connected the "Burgi," in which were stationed the garrisons composed of the colonists; and the inscriptions which are daily turned up by the plough of the husbandman in the vicinity of the Walls of Septimius Severus[2], of Hadrian, and of Lollius Urbicus, attest the density and industry of the population, who were mingled with the Romanized Britons, and held the border as their inheritance and patrimony. The eastern coasts were guarded in like manner; though it is probable that in some of these last-mentioned districts a partial colonization had already been effected by the Saxon enemy.

Tungrians brought in by Agricola to carry on the war against Galgacus: their descendants continue stationed at or near Castle Cary, Cramond, &c.

According to the imperial constitutions, the Limitanean dotations were strictly entailed. The feud descended only to the male heirs of the donee; and the lands owned by the "Castellani" could never be alienated to a non-military Tenant[c]. The duty of bearing arms was inseparably connected with the property; and the oath of fidelity imposed upon the soldier sanctified his engagements, and ratified the possession of the land

Conditions of the Limitanean feuds.

Oath of fidelity exacted from the soldiers.

[a] The stations of the Auxiliary Cohorts have been learnedly and laboriously illustrated by Horsley (p. 88, &c.), who, taking the Notitia as his groundwork, has enlarged the list from the information furnished by inscriptions, and to which additions may be made from later discoveries. Some very curious specimens of the "Tabulæ honestæ missionis" [the certificates of honourable discharge], or the discharges given to the Veterans upon completing their stated term of service, which have been brought to light since his time (Lysons, Rel. Brit. Rom., vol. i. p. 4, plates I. and II.), furnish the names of the Barbarian colonists settled in Britain under Trajan; and by the help of monuments and the Notitia, they may be continued until the extinction of the Roman dominion.

[b] Tacitus, Agricola, c. 36. The first Cohort of Tungrians, who are mentioned in the Tabulæ honestæ missionis, dedicated an altar to Antoninus Pius, found near Castle Cary (Roy, p. 100). They were also stationed at Cramond, at Castlesteads (Cumberland), and at Housesteads (Northumberland), where we have inscriptions relating to them, under four or five different commanders. (Horsley, p. 89.)

[c] Ainsi c'étoit quelque chose de semblable à ce qu'on a depuis appellé des fiefs nobles. Tillemont, Hist. des Emp., iii. 201. [Thus it was somewhat like what has since been styled fees noble.]

which he enjoyed[a]. It must be here observed, that the "Benefices" granted by the earlier Cæsars have been considered as Feuds of an analogous nature. The descriptions of the territories so denominated, were enrolled or recorded in the "Liber Beneficiorum[b]" of the province; and the estate of the grantee, which determined with the death of the Emperor from whom the gift had proceeded, required to be renewed by his successor. Tiberius directed that each individual should obtain a special charter; but Titus confirmed the title of all the Beneficiaries by one general edict[c]. It certainly remains to be proved that any military obligation resulted from those possessions; yet the instances which can be adduced of onerous duties annexed to the tenure of land may fortify the supposition that Severus was not an innovator, though it may be probable that he imparted more stability and consistency to the system than had hitherto obtained.

"Benefices" granted by the earlier Emperors.

Probability that the conditions annexed to the Limitanean grants were not first introduced by Alexander Severus, but that he only gave more stability to the system.

Whatever doubts may be entertained respecting the strict obligation imposed upon the sons of the Veterans anterior to the age of Constantine—for there is none as to the Limitanean soldiery—the law is sufficiently clear after that period; and the privileges conferred by Valentinian planted the territorial militia in every part of the Empire. Wherever vacant or common land was to be found, the Veteran might appropriate a portion of the fields, and hold them as his demesne, the state providing the means of cultivation[d], and freeing them from all rent or land-tax. The policy of the Celtic tribes would afford ample room and verge for such acquisitions; yet a subsequent law gave a still greater extension to the privilege, by allowing the Veteran to occupy any of the possessions which had been allowed to relapse into waste, by the sloth, the poverty, or the despair of the previous owners[e].

Valentinian allows the Veterans to appropriate any common or vacant land (i.e. the possessions of the Celtic tribes, see above, p. 67), which was held free from rent or tax, but subject to military service.

[a] Augustinus, Serm. i. in vigiliis Pentecostes [Augustine's first sermon on Whitsun Eve].

[b] Suet., Tit., c. 8. Hyginus, de Limitibus, p. 193. Dolabella, de Limitibus, p. 301.

[c] Suet., Tit., c. 8.

[d] Cod. Theod., lib. vii. tit. 20, l. 8. Impp. Valentinianus et Valens, ad universos Provinciales, A.D. 364 [the Emperors Valentinianus and Valens, to all the Provincials]. These possessions, the *κτήματα στρατιωτικά* of the more recent Greek lawyers, are evidently the origin of the Timariots of the Ottomans.

[e] Cod. Theod., lib. vii. tit. 20, l. 11. Valentinianus, Valens et

Part I. Ch. X.

In return for these and other immunities, the most imperative obligation was imposed upon the son of the Roman Veteran, and of the Barbarian Lætus; and all individuals of military race were liable to the same duties and obligations[a]. When the edict was promulgated, the youth was compelled to resort to the standard which his father obeyed[b]. Even if he took holy orders, he was not exempted from the call of arms; and the Prelate was compelled to employ the most earnest entreaties to obtain the discharge of the servant of the altar, and to protect him from the punishment denounced against the deserter by the severity of military discipline[c]. As in the "Colleges" of operatives, the duty was both personal and real, inherent in the blood, and resulting from the land; and by the general tenour of the law, as well as by the particular rescripts which have been preserved, we are enabled to ascertain that no alienation could defeat or evade the original condition upon which the demesne was held.

Sons of the Veterans, &c. compelled to join the army.

No exemptions allowed.

Nor could any alienation defeat the condition upon which the land was held.

The "Magistri Militum,"[1] first appointed by Constantine, and of whom eight were ultimately created, possessed the supreme government of the soldiery throughout the Empire. But the authority of these high Officers, except in their own immediate districts, was merely nominal, and their Lieutenants or Delegates were the real and efficient Chieftains of the military[d]. The General deputed to take the command of a Diocese for the purpose of defending the country against the enemy, was usually a Count of the highest class[e], and entrusted with the most extensive powers. Beneath him were the Counts and Dukes of the Provinces, or rather of the military districts, as their boundaries did not always coincide with the civil governments. It is possible that, according to the original distribution of the military hierarchy, the "Duces" or leaders had some special duties to perform,

"Magistri Militum," or supreme commanders of the army.

Provinces entrusted to the Military "Comites" and "Duces."

Gratianus, ad Jovinum Magistrum Militum, A.D. 368, vel 370 [Valentinianus, Valens and Gratian to Jovinus, the Master of the Soldiers].

[a] Cod. Theod., lib. vii. tit. 20, l. 12; lib. vii. tit. 22, ll. 7, 9.

[b] Sulpicius Severus, Vita Sancti Martini, c. 4.

[c] Greg. Nazianzen, Epist. 123, ad Ellebichum Magistrum Militum [Gregory Nazianzen, Epistle 123, to Ellebichus, the Master of the Soldiers].

[d] So that Pancirollus doubts the supreme authority of the Magistri, and considers the Counts of the Dioceses as possessing the same powers, or as being Magistri under another name. (Notit. Imp., c. 28.)

[e] Cod. Theod., lib. vi. tit. 14, ll. 1, 3.

particularly in the regions immediately exposed to the attacks of the Barbarian enemy. Tautomede, the Duke of Dacia Ripensis, is thus directed to repair and build the castles and towers whose battlements were to awe the predatory hordes of Sarmatia[a]; and the selection of the sons of the Veterans for military service appears to have been confided to their care[b]. But the distinctions, whatever they may originally have been, were gradually disregarded. The Comes had, perhaps, a higher title, but an equal office; and the powers exercised by the Counts of Provinces and by the Dukes were assimilated by the practice of the government[c].

Tautomede, Duke of Dacia Ripensis.

It would be an interesting but difficult task to pursue the investigation of the military establishments throughout the Empire. The "Magistri," in whose precinct Britain was included, first held their station at Trèves, the capital of the Prefecture of the Gauls, but afterwards at Arles. In the island itself, the Count of Britain had the southern and western parts under his especial command; and it has been conjectured that he was supreme commander of the Diocese. Another Count ruled the "Saxon Shore," which extended from Brancaster[1], in modern Norfolk, to the "Portus Adurni"[2] in Sussex; whilst the Duke of Britain governed the remainder of Roman Britain[d], including the Northern Marches, settled and defended by the Limitanean soldiery.

Britain subject to the Magistri Militum of the Prefecture of the Gauls, who resided at Arles or Trèves.

Divided into three Military Provinces, respectively governed by the "Comes Britanniæ," the "Comes litoris Saxonici per Britannias," and the "Dux Britanniarum."

The leaders named by the Emperor were the magistrates as well as the commanders of the military. A jurisdiction derogating so largely from the power of the provincial governors, began, as

Military Counts and Dukes, the Magistrates as well as the Commanders of the soldiery.

[a] Cod. Theod., lib. xv. tit. 1, l. 13. De turribus limitaneis per Daciam Ripensem partim reficiendis, partim novis excitandis. Valentiniani Sen. lex, A.D. 361. [Concerning the border towers throughout Dacia bordering on the Danube, those which were to be restored, and new constructions.] It is the conjecture of Gothofredus, that instead of Tautomede, we should read Tautomer or Teutomer, and that the Duke of Dacia was the Frankish Chieftain, the "Protector Domesticus," mentioned by Marcellinus, lib. xv. c. 3.

[b] Cod. Theod., lib. vii. tit. 22, de Filiis Milit. l. 5.

[c] Cod. Theod., lib. vii. tit. 1, de Re Militari, l. 5.

[d] Notit. Imp., 72, 89. The stations emblazoned on the Banner of the Dux Britanniæ are only in Yorkshire and the four northern counties (Horsley, p. 187); but his authority must have extended to the uttermost verge of the Roman dominions.

Part I. Ch. X.

may be readily conceived, with criminal judicature, but it was afterwards extended to civil authority[a]; and in some Provinces, though these are to be considered as exceptions from the general rule, the military and civil authorities were conjoined in the person of the Duke or Military Governor. But in every case, the soldiery constituted an Estate distinct from the rest of the people; and the privilege or licence, however abusive, so often exercised by the provincial military of electing a Chieftain, who, whether called Emperor or Tyrant, claimed the supreme dignity, gave them the appearance of a predominant community.

Military constituted a distinct and ruling "Estate," in consequence, as well of their privileges, as of the right which they assumed of electing an Emperor.

When the Barbarian kingdoms were established within the Empire, the most important of the Roman maxims and modes of government were adopted, though certainly not without considerable modifications, by the founders of the dynasties who despoiled the Romans of their sovereignty. It has been supposed, that a universal change took place in Europe about the sixth century, and that the laws and policy now established must be traced entirely to the chaos occasioned by the general wreck of nations[b]; but these opinions cannot be easily reconciled to familiar facts. Whether we consult the chronicle or the charter, whether we inspect the seal or the coin, we shall find the Goth, and the Frank and the Lombard, copying the state and assuming the dignity of the former masters of the world. The Barbarian Chieftain sought to identify himself with the monarch to whom he succeeded. Clovis received the consular diploma and the purple robe from the Emperor of the East, and derived the title of Augustus from the acclamations of his people[c]. Theodoric[1]

Barbarian nations, their policy greatly influenced by the Roman institutions. Reasons for doubting the accuracy of Dr. Robertson's opinions respecting the changes consequent upon the downfall of the Roman Empire.

Founders of the Barbarian dynasties endeavour to govern as Roman Emperors.

[a] Cod. Theod., lib. ii. tit. 1, l. 2. Maffei, Verona Illustrata, t. i. l. 8, pp. 340, 343. Ammian. Marcell., lib. xxvi. c. 1. Cassiodor., Variæ, lib. vi. 12, 21. Savigny, vol. i. c. 2.

[b] Robertson, View, p. 10, &c.

[c] Igitur Chlodoveus ab Anastasio Imperatore Codicillos de Consulatu accepit, et in Basilica beati Martini tunica blatea indutus est et chlamyde, imponens vertici diadema. Tunc ascenso equo, aurum argentumque in itinere illo, quod inter portam atrii Basilicæ beati Martini et Ecclesiam Civitatis est, præsentibus populis manu propria spargens, voluntate benignissima erogavit, et ab ea die tanquam Consul et Augustus est vocitatus, Greg. Tur. Hist., lib. ii. cap. 38. [Clovis, therefore, received the Diploma of his appointment as Consul from the Emperor Anastasius, and in the Church of St. Martin was clad in a purple tunic and mantle, and placed the crown on his own head. Then, mounting his horse, he scattered gold and silver with his own

wished to appear as the colleague, not the rival of Anastasius; and he therefore preserved not only all the forms but all the spirit of the Roman institutions, declared by him to be the most transcendent sources of regular government and good order. He exhorted the Roman people to emulate the virtues of their ancestors; and the fur-clad Ostrogoth never addressed the Conscript Fathers but with respect, reverence and submission[a]. The legislation of Rome was adopted by the Visigoths at Arles, and imitated at Toledo; and the throne of the Frankish kings was surrounded by functionaries, designated by the same names as in the court of the Emperors, or performing analogous duties.

Early approximation of the Teutons to the Romans.

The adoption by the Barbarian Sovereigns of the machinery and maxims of the Roman government, was indeed the natural and obvious result of the circumstances under which they were placed. During many centuries, the Teutons and the Romans had been approximating; whilst every surrounding nation considered Rome as the legitimate source of power. From the Eternal City, the rulers of the Western Barbarians were wont to accept the royal dignity; and the title of King had been given to Ariovistus[1] by the gratitude or favour of the first of the Cæsars[b]. Allies or vassals of the Empire, the leaders of the warriors of Germany, had been entrusted with command, allured by liberality, and adorned by honours; and the pre-eminence of the Frankish line may perhaps be traced to the time when Merobaudes[2], who had been invested with the offices of Count of the Body-guards and Master of the Militia, was also decorated, like Clovis, with the consular honours[c].

Royal dignity bestowed upon Ariovistus by Cæsar.

Merobaudes, the Frank, "Comes Domesticorum," and "Magister Militum."

Barbarian Sovereigns, reigning with the rights of the Roman Emperors over their Roman subjects, whom they were entitled

The continued settlements of the Læti on Roman ground had the effect of Romanizing the mass of the Barbarian population. Political sagacity taught the Barbarian Chieftain to assimilate himself to the conquered. Warily and considerately did he attempt, in the first instance, to legalize his dominion by obtaining the sanction of the head of the Empire. He sought to be obeyed

hand in the presence of the people along that street, which lies between the door of the porch of the Church of St. Martin and the Church of the City, and gave this largess with the greatest good will and from that day was styled as if Consul and Augustus, Gregory of Tours, History of the Franks.]

[a] Cassiodor., Variæ, lib. i. 4, 31; ii. 24, 32; iv. 6; v. 4

[b] Cæsar, de Bello Gallico, lib. i. c. 43.

[c] Ammian. Marcell., lib. 31. Prosper Aquit.

Part I. Ch. X.

rather as an associate than as an invader. The Romans retained their own laws; their municipal administration was not abrogated or subverted; and wherever a Roman population subsisted, the Barbarian King was entitled to command them with the prerogatives which had belonged to the Roman Emperor. In the character of Sovereign of the Romans, the patriarchal ruler of a half-civilized horde became master of a numerous and opulent people. The military leader, who could hitherto scarcely obtain more than the voluntary submission of his fellow-soldiers, acquired the authority which had been planned and matured by the policy of the Prince and the subtle wisdom of the jurist. And instead of appealing to the terse apophthegms of the bard, or the simple traditions of the old time, as the pure and perennial fountains of legislation, he was armed with the principles deduced from the decrees of those, who, whilst they yet lived, were saluted as deities; and from the solemn lore of the willing oracles of the law, who declared that the entire might of the Commonwealth had been surrendered to the Imperial Majesty.

to govern according to the forms and maxims of the Imperial law,

By the accession of the Teutonic King to this new, unwonted and despotic dignity, it was not intended by his people, or perhaps contemplated by himself, that he should become entitled to impose a yoke upon his compeers who had assisted him in the enterprise, nor did they ever surrender their rights; and the higher estimation of the honour and the life of the Barbarians is a sufficient testimony of their superiority. But the nations who were unequal before the law, soon became equal before the Sovereign, if not in theory, yet in practice; and the children of the companions of Clovis were subjected, with few and not very material exceptions, to the same positive dominion as the descendants of the Proconsul or the Senator.

and which species of domination they gradually imposed, to a considerable extent, upon their own people.

It is not difficult to form plausible conjectures concerning the causes of this equalization, nor are the means by which it was effected entirely concealed. Considered in relation to the Romans, the Franks, for we will continue to instance them, constituted a distinct state, but, compared to the Romans, a very small one; and the individuals composing it, dispersed over Gaul, were almost lost amongst the tributaries. Experience has shewn, that whenever a lesser or poorer dominion is conjoined, in the person of the same Sovereign, to a greater or more opulent one, the minuter mass is always in the end subjugated by the larger; and the claims of the honoured patrimony of the King are postponed to the laws and maxims of the territory which has obtained the ascendancy

Causes which facilitated this extension of the royal power.

Barbarians, few in number when compared to the Romanized population.

by its influence and importance. And though the were-gild was assessed in the folkmoot, according to the declarations of Arbogast and Salogast[1], yet the transgression towards the Sovereign was punished according to the spirit of the Imperial consistory; and the King, whose great ancestor could not claim a silver chalice as his own, from amongst the booty which his army had won, became the irresponsible master of the lives of his proudest nobility.

Absolute authority possessed by the Frankish sovereigns over their subjects, though Clovis himself was not able to claim the vase of Soissons[2] from the soldiers.

The general forms of Roman administration were retained in effect, though in a more simple form. The government of a province was usually entrusted to a "Comes," a "Dux," or a "Patricius"; the titles appearing to be used without any distinction; and he was appointed to govern "the Franks, the "Romans, the Burgundians, and all other nations" within his district, according to their laws. He was the common Judge of the different races, who, though retaining their own peculiar jurisprudence, were nevertheless the subjects of one King; the revenues were collected by his hands; and the union of the civil and military authority, according to some of the Roman precedents, which the Franks seem to have extended to all cases, completed his authority as the representative of the Sovereign[a]. The powers thus exercised, resulted from the royal diploma; the King is acknowledged as the fountain of the honour, and passages can be quoted which seem to shew that the office which he bestowed could be resumed at his will. Yet the charter itself refers to the ancestor of the grantee. Hereditary right is ascribed to the Dukes by the earliest Germanic codes; and as high as we can ascend in the genealogies of particular families, we can discover that the dignity, if not strictly descendible from father to son, was at least continued in the same blood and lineage.

Provinces governed by Counts, who, as the delegates of the imperial power of the King, were the judges of all the inhabitants.

Reasons for supposing that this office was usually bestowed upon the hereditary leaders of the Barbarian population, and that the two kinds of authority, the vicarial or delegated, and the hereditary or patrimonial, coalesced, the former being *attracted* by the latter.

Contradictions such as these are best reconciled by the theory, that the King's authority was imparted to the nobles, who were the natural leaders of the tribes of the ruling nation, and that the office of Count was attracted by the patrimonial jurisdiction. By accepting the royal commission, the Senior or Ealdorman accumulated the vicarial jurisdiction upon his own, and they became inseparably blended, when, in process of time, the distinctions between his rights as Chieftain of the Clan, and his duties as the King's minister, were neglected and forgotten.

To this cause we may ascribe the great uniformity of character

[a] Marculfi Formulæ, lib. i. form. 8.

Part I. Ch. X.

apparent amongst all these functionaries in the dismemberments of the Empire; and with respect to the power of legislation, as exercised in the States of the Middle Ages, we shall find reason to suppose that it was greatly influenced by the Roman principles. Limitations may have been imposed upon the royal authority, and the nation may have guarded against its abuse with wise or vigilant jealousy; but every monarchy of Europe agrees in the theory which assumes, that the People are petitioners in the supreme political and legislative assemblies of the whole Kingdom, that the Judges or Peers are the councillors, and that the King is the maker of the law. This was not the original constitution. Assembled on the moot-hill, the Doomsmen of the Franks declare the Salic code; but in the constitutions of Childebert[1] and Clothaire, the Monarch commands his subjects, and requires their obedience to his decree. And, wherever we turn, the modes of legislation which secure legislative privileges to the aristocracy or the people, always appear struggling against the doctrine that they are only the advisers or suppliants of the Sovereign, who may dispense with their opinion, or issue his ordinances without waiting for their request. But, in descending in the political scale, more autonomy is discernible; and within the limited spheres of the territorial jurisdictions which form the component parts of the Monarchy, there are many possessing an evident degree of self-government, not derived from the Sovereign, and not necessarily controlled by his authority.

European States of the Middle Ages, all agreed in the theory, that the King was the maker of the *law of the State*,

whilst, in the component parts of the State, powers of legislation may be discerned which are not dependent upon the Monarch.

The existence of these concurrent, and, in some measure, conflicting powers, will be at once explained and understood by considering that the King originally governed by two distinct titles, and that a double authority was united in his person. Over each particular Teutonic commonwealth he presided with the ancient rights of the Teutonic Chieftain; and, during the transition period of their history, the popular representatives, in and within the Gau, the Centena, the Pagus, or the Township, had lost only a portion of their primitive jurisdiction. But the relation existing between the same district and the Chief of the whole political commonwealth of that Kingdom, which he ruled with Imperial authority, was of a far different nature. The Echevins, who might have the power to make a by-law for their own clan, could only solicit or accept the Capitular which the Monarch, the successor of the Cæsars, promulgated for his entire Empire. Unquestionably, the laws and customs retained by the Teutons greatly assisted in the formation of the Parliaments,

The State, *as a whole*, being governed by an authority analogous to the Imperial authority, though each Teutonic population, taken distinctly, was governed by the King with an authority analogous to that of the older Teutonic Chieftains.

Cortes, and Legislative Assemblies of modern Europe; but they were by no means the sole elements; and without pretending to determine the exact extent of the influence of Roman policy, we may be convinced that we must emerge from the forests of Germany in seeking the origin of the English Constitution.

CHAPTER XI.

Provincial Emperors—Improperly considered as Tyrants or Usurpers —Revolutions of the Provinces under these Rulers, the remote causes of the establishment of the Kingdoms of Modern Europe— Emperors of the Gauls—Emperors of Britain—Carausius— Growth of the Saxon power in Britain—Allectus—Constantius —Magnentius and his adventures—Maximus or Maxim Wledig —Colonizations of Armorica—Descent of British Princes from Maximus—Continued invasions of the Saxons—Rapid succession of British Emperors—Britain finally separated from the Empire.

"Tyrants" of the Empire.

THE annals of the Roman Empire contain the names of numerous individuals, who, invested with the purple in the different Provinces, maintained their station with more or less energy and success. These Sovereigns are usually designated as "Tyrants," because they were opposed or subdued by competitors, who have obtained from historians and posterity the more grateful title of "Emperors." Yet this distinction, however sanctioned by usage, cannot be established by any correct or consistent reasoning. It is hardly necessary to observe, that the term "Tyrant," according to the diplomacy of the ancients, was applied technically, to denote a usurper; but usurpation can only exist in opposition to established law; and in attempting to define the Tyrant, the basis of the proposition is wanting. Where can we discover the canons which determined the Imperial succession? and from what record can the inquirer collect the principles which may enable him to distinguish between the intrusive occupant and the legal representative of the Cæsars? The Imperial dignity was created by the sword; and the nomination of the legions preceded the authority imparted by the decree of the conscript fathers[a], who, with smiling cheer, and arrayed

Impropriety of this designation, if intended to designate an illegal usurpation of power, the succession to the Empire not being guided by any fixed principles, so as to furnish any consistent definition of a legitimate Emperor.

[a] Tacitus, Annal. lib. xiii. c. 4. Gibbon, vol. i. c. 3. Dubos, vol. i. p. 58.

in festive garments, hailed the pious and victorious master given by the armed electors to the Roman world. Had the Prætorian bands alone possessed the power which compelled the Senate to bestow the title of Augustus, and to confer the magistracy of the Republic upon the favourite chieftain or the successful general, the mode of appointment, however abusive in its origin, would at least have been certain and ascertainable; there would have been a settled rule, though grounded upon a privilege which had been tortiously acquired. But the legality of the choice depended upon the chances of war. Success was the real standard of legitimacy. Thus, when Aurelian prevailed against Quintilius[1], it was only the valour of that sturdy Peasant, who owed his fortune to the warriors on the shores of the Danube, which decided that he had a better claim to the sovereignty than the sage, who derived his elevation from the voice and suffrage of the Legions of Rome and the approbation of all Italy. Such contests, repeated in province after province, and year after year, characterize the memorable era when the Roman world witnessed the accession of those rulers, who, rising against Valerian[2] and Gallienus, the Gothic Claudius and Aurelian, are represented as "shining models of virtue" by the writer who stigmatizes them as pretenders to the throne. But let an example be selected, and the justice of the language thus employed will become more than dubious. Gaul and Spain and Britain had been erected at this period into a flourishing Empire, denying obedience to the Roman Emperor. Posthumus[3], the ruler of these countries, had been called to the sovereignty by the affection of the people, weary of the government of the weak and cruel Gallienus, the disgrace and terror of Italy; and if the palsied Senate, assembled on the Capitol, branded this change of dominion as a rebellion, the Court of Trêves might reasonably question the nature of the rights devolving upon a son, who enjoyed his dignity because he permitted his father to languish in hopeless captivity; or, ascending a degree higher in the pedigree, they might inquire by what means the legions of Rhætia acquired the authority of imposing Valerian himself upon the Dioceses of the East, or the Prefectures of the West? If the safety of the Republic was to be considered as the supreme law, Posthumus had a still fairer claim. The "Restorer of the Gauls" expelled the Barbarians who had crossed the Rhine; his ability retarded the sway of the Frankish Chieftains; and the Provinces ruled by the "Tyrant" became the bulwarks of the other portions of the Empire.

Success, the real standard of legitimacy, as instanced in the case of Aurelian.

The "Thirty Tyrants." (See Gibbon, vol. i. c. 10.

Empire of the Gauls, (which included Gaul and Spain) under Posthumus and his successors, A.D. 261–268.

Part I. Ch. XI.

A.D. 271–274. Emperors of the Gauls: Lollianus, Valerianus, Marius, Tetricus.

Lollianus, Valerianus and Marius, the successors of Posthumus, all perished by the seditions of their soldiers; but the fate which befel them, in common with Probus and with Tacitus, was no impeachment of their right; nor can the violent deposition of these Emperors be therefore admitted as any proof of the illegality of their authority; and the influence exercised by Victorina[1], who, assuming the style of Augusta, participated in the government of those whom she had protected, was at least as constitutional as the power which Mamæa[2] had possessed. Tetricus obtained a tacit acknowledgment from Claudius, his contemporary, whose Empire was confined to Italy, Africa, Thrace and Illyria[a]; and when at length he was driven from Gaul, the government of Italy, and perhaps the title of Augustus bestowed upon him by Aurelian, may more properly be considered as compensations for territories unjustly usurped, than as the tokens of the clemency or regard of his triumphant conqueror.

Tendency of the Roman Provinces to separate themselves from the Empire, and to constitute themselves into distinct States.

These revolutions, and very many of the same kind will be recollected by the reader, if they were symptoms of the decline of the Empire, were also occasioned by its conformation. Like the later realm of Charlemagne, the Roman dominion was an heterogeneous assemblage of communities, whose nature was such as to give them a constant tendency to sever themselves from each other, and to break the chains by which they were connected. Possessing the various characters of colonies, of conquests, and of allies, the Provinces were not united by any political bond of union. Viewed collectively, they bore the appearance of a great nation, but they were destitute of the reality; they were not one, but many; each portion and member contained a centre of repulsion; and the prevailing form of government, however calculated for the purpose of enforcing obedience to the Sovereign, was ill adapted to insure the integrity and stability of the Empire. A territorial establishment estranged the soldiery from Italy; and the home of the legionary was the city or station where he enjoyed the inheritance of his fathers. The Provincial Councils sustained the national feeling, and encouraged the secret yearnings of the people towards national independence.

Roman Emperors: their government not supported by opinion or feeling.

To these causes of separation must be added others, resulting from the personal origin of the Rulers who acquired the imperial authority. The Roman Emperor was not the representative of a long and honoured ancestry. Flattery might raise the altar to

[a] Gibbon, vol. ii. c. 2.

the deified Monarch whilst living, or portray his form ascending from the funeral pile to the regions of Olympus; but the allegiance rendered to him was ungraced by the affection yielded to the Patriarchal Chieftain, and unsupported by the illusions of patriotism and loyalty. Nor did any sentiments exist, supplying the place of these sources of attachment; for the supreme heads of the Empire were ceasing to be Romans even in name. Not merely were the great majority of the Emperors Barbarians by race and blood, but several of the most distinguished sprang from the lowest classes of society, and derived their origin from the cultivators of the soil. Such was Galerius[1], the Illyrian neatherd; and so strongly was he attached to the nation whence he descended, that it was his desire to have obliterated the name of Rome, and to have converted his dominions into a Dacian Empire[a]. If the legitimate associate of Diocletian could entertain these wishes, we may well believe that similar inclinations existed, with greater strength, in those who were gifted with the powers of government by the choice or assent of the Provincials. Nor are the "Tyrants" to be considered as mere pageants, whom an armed crowd had adorned with a futile diadem. Amongst the soldiers who bestowed the dignity, were the military colonists, the Baronage of the Empire; and their choice was sanctioned by the legislature. From the history of Avitus[2], we may ascertain the share taken by the Common Councils in the election of the national Sovereigns. The entire absence of free will in the Roman Senators when they ratified the acts of the legions, may perhaps induce us to attach little importance to the proceedings of the "Honorati" of Gaul; but it must be recollected that the timid and venerable Patricians who sat in the chairs of Cicero and Cato were the mere creatures and nominees of the Emperor, whilst the members of the Provincial Assemblies represented the power and wealth of the land, and participated in all the opinions of their countrymen.

Barbarian origin of the great majority of the Roman Emperors.

Galerius, the Dacian.

Provincial Emperors to be considered as national sovereigns, and as the precursors of the Kings of Western Christendom (see below, p. 309).

(See above, pp. 277, 278.)

Concurrent with these political changes were the insurrections of the "Bagaudi" in the West. They have been described as revolted peasants[b]; but the rebels who had gained so many open or secret partizans, that it became necessary to exact a special

Insurrections of the Bagaudi in Gaul, A.D. 285, in the second year of the reign of Diocletian:

[a] Ut non Romanum imperium, sed Dacicum cognominaretur, Lactantius, de Mort. Persec., c. 27. [That it might be called, not the Roman, but the Dacian Empire, Lactantius, Concerning the Deaths of the Persecutors.]

[b] Gibbon, vol. ii. c. 13.

Part I. Ch. XI.

oath of fidelity from the soldier, binding him to oppose them[a], must have had stronger claims to favour than could have been possessed merely by the servile villeins. Robbers, as they are called, this epithet seems rather to have resulted from the fear or animosity which they excited, than to have been earned by their misdeeds[b]. Their Celtic appellation merely describes them as a multitude[c]; and even if it had warranted the epithet bestowed on them by the Latin writers, it may be easily understood from our own annals, and from those names which are as current as household words, how little relation there may exist between the etymology of the designation originally appropriated to a political faction, either by the sport of its friends or the spite of its enemies, and the character which the party afterwards really deserved or assumed. From the very scanty memorials of those civil wars, we may pronounce that the Bagaudi were the inhabitants of the open country, who, irritated by evil government and oppression[d], were attempting to render themselves independent of Rome, but without the concurrence of the aristocracy of the "Civitates," and in opposition both to the legions and the Provincial Assemblies; and their leaders, Aulus Pomponius Ælianus and Cnæius Salvius Amandus, therefore assumed the Imperial title and insignia. How widely they extended their dominions, we are not informed; but the castle of the Bagaudi[e], near Paris, marks one of their frontiers; and it is here, according to tradition, that they defended themselves against the forces of Maximian[1], who was compelled to win the share of the Empire to which he had been associated.

described as rebellious peasants, and designated as robbers, but probably the inhabitants of the open country, or Romanized Gauls, who were endeavouring to render themselves independent, without uniting to the aristocracy of the "Civitates" or to the soldiery.

A.D. 285. Ælianus and Amandus, leaders of the Bagaudi, assume the Imperial title.

A.D. 407–441. Bagaudi still continue as a very powerful party in Gaul and Spain.

The defeat, which for a time, effaces the Bagaudi from history, did not suppress their resistance; in the fifth century

[a] Vita S. Mauricii, Acta Sanct. Septembris xxii.

[b] Aurelius Victor, p. 207. Eutropius, lib. ix. c. 13, § 4.

[c] *Bagad*, a troop, a multitude. (Owen Pughe.) The same word bears a similar meaning in the Celtic dialect of Armorica. (Du Cange.)

[d] Paneg. Vet., i. 4, 3; iii. 4, 1.

[e] Now St. Maur. This fortress was situated on a peninsula formed by the sinuous course of the Marne; and the ramparts which protected it on the north may be yet traced in the Park of Vincennes (see plan in Stukeley's Carausius, vol. ii. p. 109). According to the traditions of the country, the castle had been built by Julius Cæsar. (Vita S. Baboleni, apud Duchesne, vol. i. pp. 661, 662.) Medals of the Emperors of the Bagaudi are extant; and are described in the works of Goltzius and Banduri. They are extremely rare.

they were in great force, not only in Gaul but in Spain[a]. During the long interval which had elapsed since the reign of Diocletian, the Bagaudi had been strengthened and united by inflexible resistance and by stubborn tyranny; by the bonds of misery and the fellowship of crime. So direfully had they been oppressed that the Bishop of Marseilles could not refrain from bestowing all his pity upon the sufferers, and all his indignation upon those whose tyranny had goaded them to despair[b]. About this period, the cities of Armorica, imitating the example of Britain, in which a similar event had taken place, and aided perhaps by the Frankish Læti settled in the capital of modern Britanny, expelled the Roman Magistrates[c], and constituted themselves into an independent Commonwealth, of which some portion was already governed by a British Prince. This revolution was followed, or perhaps accompanied, by a general and simultaneous insurrection of the Bagaudi throughout the north of Gaul; and though we cannot assert that they actually invited the Barbarians, yet as they anxiously sought to place themselves under the more tolerable yoke of the enemies of Rome, there is little reason for doubting but that the civil war greatly assisted the victorious establishment of the Frankish monarchy; whilst the alliance of Clovis with the Armoricans, and with the Frankish subjects of the Armorican sovereigns[d], was one of the firmest supports which his authority received[e]. Unconscious of the ends which they were destined to accomplish, the Provincial Emperors were the precursors of the Barbarian dynasties, and the revolutions which the Provinces sustained under their government gave the impulse which ultimately facilitated the conquests of the Barbarians, and detached the Kingdoms of modern Christendom from the Empire.

A.D. 409. Assist the Armorican Provinces in rendering themselves independent, and in the establishment of the Frankish monarchy.

[a] Idatii Chron., ad ann. 407, 441.

[b] Salvianus, de Gubern. Dei, p. 105.

[c] Zosimus, lib. iv. c. 5.

[d] Procopius, de Bello Gothico, lib. i. c. 12. Dubos, vol. iv. pp. 5, 8.

[e] Grallent or Grallonus takes the title of "Rex Britonum necnon ex parte Francorum" [King of the Britons and also of some of the French], in the charters which he granted to the Abbey of Landevenec. (Lobineau, vol. ii. p. 17.) There is some difficulty in ascertaining the exact era in which Grallent reigned. Gallet supposes between 434 and 445; though, according to some ancient authorities, he made his first donation to Saint Winwaloc of a very large number of *Trevs* and townships, before the year 400. (Vita S. Winwaloci, Acta Sanct. Martii iii.)

The first "Tyrant" of Britain in the reign of Probus.

If we apply this hypothesis to Britain, we must seek for the events which conduced to the dominion of the Anglo-Saxons, long before the arrival of those sons of Woden, whom our monkish chroniclers teach us to consider as the first founders of the Heptarchy. And as far as the chain of causation can be traced, the series should commence with the accession of the general or leader, whose name has not been preserved by historians, and who, after a very short reign, was slain by the artifice or treachery of Probus, his competitor[a].

A.D. 288. Carausius, the Menapian.

Carausius obtained a more durable ascendancy. This Sovereign was a "Menapian" by birth. The nation whence he originated had been divided by its migrations into several colonies; one was settled in Erin[b], another was founded in the islands of the Rhine; and the Menapia of Britain, now St. David's, seems also to have belonged to these tribes. Carausius was born in Britain, according to an authority[c] which we are at present compelled to receive with hesitation, and which is opposed to the Roman writers, who call him the "foster-son of Batavia." Yet, for the credit of Richard of Cirencester, it may be remarked, that the same uncertainty prevails with respect to many of the Emperors and most of the "Tyrants." The contradictory statements of contemporary writers were evidently occasioned, not so much from inaccurate information as from the difficulty of finding accurate language. In one narrative, perhaps, the individual is described according to his race; in another, according to his local birth-place; in a third, according to the domicile of his immediate ancestry; thus the son of a companion of Strongbow might be considered, with equal truth, as a Norman, an Irishman, or an Englishman[d]. Carausius, perhaps himself a pirate, had been accustomed to the sea from his earliest youth; and he was raised by his valour and talent to the command of the navy destined to repress the incursions of the Saxons and the Franks, who ravaged the shores of Britain and of Gaul with

Opposed to the Franks and Saxons.

[a] Zosimus, lib. i. c. 66.

[b] In Wexford and the adjoining counties.

[c] Ric. Cir., de Situ Britanniæ, lib. i. c. 8, § 14.

[d] Bonosus, who included Britain in his transitory empire, affords a curious example of the complicated and Barbarian relationships of the Roman Sovereigns; he was born in Spain, but he was the son of a British father by a Gaulish mother, and he was married to Hunila, a Gothic princess. (Vopiscus, Bonosus, c. 14.)

relentless intrepidity. In this station, he prosecuted his enterprises against the Barbarians with great success, and he was also a useful assistant in reducing the revolted Gauls to temporary tranquillity, though not to permanent obedience. But his fidelity became doubtful; dark suspicions arose respecting his collusion with the enemy; and, it being anticipated that he would throw off his allegiance to Diocletian and Maximian, orders were sent by the latter to put Carausius to death; but he evaded the fatal messenger; and the wealth which he earned by his exploits, as well as the reputation which he gained in his victories, persuaded the British legions and auxiliaries to hail him as Augustus, and to bestow upon him the Imperial diadem. Maximian, who made some fruitless attempts to rid himself of this rival, was repelled with disgrace. The insurrection of the Bagaudi was scarcely quelled; and in the internal commotions of Gaul, we may discover the causes which compelled Diocletian and his colleague to admit, however unwillingly, a third Augustus, as their compeer.

Becomes Emperor of Britain.

The Emperor of Britain, whose dominions included Boulogne and the adjoining coast of Gaul, immediately used every exertion to maintain his sovereignty; he built vessels of war, and raised great forces, inviting to his service the Barbarians against whom he had fought, and to whose native courage and maritime skill was now added the regular discipline of the Roman soldier. Of the wealth and splendour which graced the reign of Carausius, the numerous medals struck by him are no inadequate tokens; and the inscriptions and devices with which they are impressed, display the pomp and state which he assumed in his island Empire. Ruling in Britain, "Marcus Aurelius Valerius Carausius," for he had borrowed these imperial names, was ranked as the "Brother" of Diocletian and Maximian. The ensigns of the Eternal City are found upon his coin[a]; and it is very remarkable, that the wolf and the twins are copied upon the rude mintage of Ethelbert, the Bretwalda or Emperor of Anglo-Saxon Britain. The fleets of Carausius sailed triumphant from the Columns of Hercules to the mouths of the Rhine; his standard ruled the seas. His valour awed the Scots and Picts of the North. According to the traditions of the Britons, he repaired the Wall

Type of the wolf and twins found upon the medals of Carausius, and copied on the coins of Ethelbert, the "Bretwalda," or Anglo-Saxon Emperor of Britain.

[a] The medals quoted in the text may be found in Stukeley, plates II. 9–VII. 1, and Tannini, p. 229. Ethelbert's coin is engraved by Ruding (plate III.)[1]

Part I. Ch. XI.

of Severus. Moreover the circular temple on the banks of the river Carron, which appears to have been always viewed as a relic of great singularity, and whose destruction was reserved for modern ignorance and rapacity, was, in the age of Nennius[a], deemed to be a memorial erected by Carausius; though it was afterwards bestowed upon the fabled Arthur, who, in popular tradition, appears to have inherited the fame of the earlier warrior.

"Arthur's Oven," on the banks of the Carron, supposed to have been built by Carausius.

When Constantius was associated to the purple, he prepared to dispossess Carausius of his dominions; and, by a bold and fortunate enterprise, the British fleet stationed at Boulogne was compelled to surrender. Constantius then prepared for the invasion of Britain; but, in the mean while, domestic conspiracies had arisen, and Carausius was slain at York by the dagger of Allectus, his friend and minister, who succeeded to the Imperial dignity[b]. Carausius, amongst his other allies, had settled large

A.D. 293. Carausius slain at York by Allectus, who succeeds to the Empire of Britain.

[a] Hist. Brit. c. 20. The very ancient and curious collection of popular traditions, entitled "De mirabilibus Britanniæ" [Concerning the wonders of Britain] (Robert of Gloucester, ed. Hearne, p. 576), adds an additional marvel. Est furnus Arthuri, qui factus est ad modum thalami rotundi sine tegmine, et tamen nunquam intus pluvia cadit, nec nix, nec grando. [There is also Arthur's Oven, which is made like a round bed without a roof, and yet, there never falls within it either rain or snow or hail.] From the descriptions, as well as from the coarse engravings given by Camden and Gordon, it appears that the dome was not a real vault, but composed, like the roofs of the passages of the Pyramids, of stones overlapping each other, each lower range being kept in its place by the superincumbent mass. That the building was not Roman is sufficiently evident; and from its similarity to the "Nuraggi" of Sardinia, which are engraved in Captain Smyth's interesting description of that island, we may perhaps be inclined to indulge in the dream that it was of much more remote origin. Other buildings of the same description are said to exist in Ireland. According to Fordun (ii. 16), the edifice was constructed by Cæsar; and in Camden's time, it was still called Julius' *Hoff*, or the Court of Julius, as well as Arthur's Oven. Gavin Douglas places *Arthur's Hufe* amongst the constellations. The appropriation of the structure to Julius Cæsar or to Arthur, only shews that its origin was unknown; and it was bestowed upon these Heroes as well as upon Carausius, because they were all equally magnified by the traditions of the people.

[b] Eutropius, lib. ix. c. 13, 14, 21, &c. Mamertinus, Paneg. Vet., i. 12, 1. Eumen., Paneg. Vet., iv. 11, 12–15, 5. Orosius, lib. vii. Bede, lib. i. c. 6.

bodies of Franks in Britain. Under this name the Saxons were also understood; and the support which he obtained from his former enemies may be considered as a ground for admitting, that the surmises of his secret alliances with the Barbarians were not entirely unfounded. But these inconstant mercenaries bore no affection to his memory: they might not have been able to prevent his death, but they did not seek to avenge it; and they transferred their allegiance to Allectus without delay or difficulty. Other bodies of the soldiery, on the contrary, seem to have been opposed to him. Three years, however, elapsed before Constantius could venture to attack him in his island fastness; but the superior forces of the Romans prevailed, and Allectus fell in an obstinate conflict with the invaders.

Franks (under which name the Saxons were anciently comprehended) settled in Britain by Carausius.

A.D. 297. Allectus defeated and killed.

By this victory, Constantius Chlorus became master of Britain. Italy, Africa, Spain, Gaul, and the Island, were assigned to him, upon the abdication of Diocletian and Maximian; but he abandoned all dominion beyond the Pyrenees and the Alps; and, contented with Gaul and Britain, his Empire might have derived its peculiar denomination from the country where he most frequently sojourned[a]. Constantius had been long connected with Britain. Though divorced by the command of Maximian, to whom he owed the Empire, Constantius had first married a British wife; and if the critic hesitates to acknowledge that Helena[1] was the daughter of Cœlius or Coel, a British Prince, or to believe the traditions of the Britons relating to the adventures of Trahern[2] and Marius and Leoline, her brothers, yet no one has ever doubted that she was of British lineage; and, amidst conflicting authorities, the ancient writers who represent Britain as the birth-place of Constantine the Great, are, on the whole, nearly as weighty as those which, contradicting each other, testify in favour of Naïssus or Drepanum[b].

Constantius Chlorus becomes master of Britain, which, upon the abdication of Diocletian, A.D. 305, is assigned to him, together with Gaul, Italy, Africa, and Spain; but he resigns the three last-mentioned realms.

Constantius married to Helena, said to be the daughter of a British Prince.

Britain said to be the birth-place of Constantine the Great.

If the reign of Constantius had been prolonged, he would have established the seat of his Empire in the Island where he had passed many years of his life, and which he had won after so long a contest; but he expired at York, having nominated Constantine

Constantine the Great proclaimed Emperor at York, upon the death of Constantius his father, A.D. 306.

[a] Zosimus, lib. ii. c. 5.

[b] Gibbon (vol. ii. p. 191) decides, in his text, in favour of Naïssus; but his summary of the evidence in the accompanying note, shews how nearly the authorities balance each other. A full view of the controversy may be found in the apparatus to the Panegyrists, and in Alford's useful history.

Part I. Ch. XI.

as his successor; and the unanimous voice of the British legions and auxiliaries, amongst whom Crocus[1] or Erocus, a Teutonic king or chieftain, is remarkable both for his rank and his nation, confirmed him as the lawful master of the Provinces previously held by his father, and which, if he had not afterwards acquired the fairer realms of the East, would probably have continued without interruption as a separate Empire[a].

A.D. 350. Magnentius, perhaps a Briton,

This Empire was revived, in some respects, by Magnentius[2], the Count of the "Jovians" and "Herculians," or the Illyrian soldiery who had replaced the Prætorian bands as the guards of the person of the Emperor[b]. Distinguished by his personal prowess, his eloquence, and even his learning, this Chieftain, who was raised to the purple at Autun by the legions and auxiliaries, had been domiciled amongst the "Læti" or "Leod" settled in Gaul. From the diversity of the races who had been thus established, we can understand that he may have been either a Briton or a Teuton[c]; and without attempting to determine his lineage, it will be recollected that either statement may have been consistent with the facts of his nativity. Had his adventures been preserved by the lays of the Bards, they would have become a tale of magic and witchcraft; for the prophecies of his mother first guided his steps, but could not avert his destiny; and the sacrifice of the virgin, whose blood, mingled with wine, was quaffed by his soldiers, had been dictated by the Sorceress whose counsel he implored. Gaul and Britain submitted to his authority; and his alliance with the Barbarians, amongst whom the Saxons are particularly mentioned, tended to fortify his power. But his empire was weakened by its extent; and, after a disturbed though not inglorious reign, he gave way to the better fortune of Constantius[d].

Emperor of Britain and Gaul; allied with the Saxons.

[a] Eusebius, Vita Const. Paneg. Vet., v. 4, 1.

[b] Gibbon, vol. ii. p. 161.

[c] Μαγνέντιος ὃς ἐκ πατρὸς μὲν γεγένητο Βρεταννοῦ, Zonaras, lib. 11, c. 10. [Magnentius, who was born of a British father.] ἀπὸ Γερμανῶν, Juliani Or. i. [(Sprung) from the Germans.] Γένος μὲν ἕλκων ἀπὸ βαρβάρων, μετοικήσας δὲ εἰς Λέτους, ἔθνος Γαλατικόν, Zosimus, lib. ii. c. 54. [Drawing his descent from barbarians, but a settler among the Læti, a Gaulish people.] The error of Zosimus, who has considered the Læti as a specific nation, is easily understood. Tillemont conjectures, that Magnentius may have been the son of a Teuton born in Britain. The converse of the supposition is equally probable.

[d] Zosimus, lib. ii. c. 46–52. Juliani Or. i. p. 62. Socrates, lib. ii. c. 28.

Britain, fertile in tyrants[a], continued to be agitated by the internal commotions which had seemed its characteristic; and Valentine or Valentinian assumed the Imperial dignity. His history, as commemorated, is confined to the notices of his attempt, his defeat and the vengeance which was inflicted upon him. He was conquered, and perished as a criminal. But his adherents were so numerous, that the Count Theodosius, Commander of the troops adhering to the legitimate Valentinian, dreaded to unravel the conspiracy; and the fear of exciting another revolt by inefficient severity, induced him to desist from any further prosecution of the offenders[b].

A.D. 367–369. Valentinianus or Valentinus assumes the Empire in Britain.

Maximus[1], the next succeeding ruler of Britain, declared to Saint Martin, that he accepted the Empire with regret, but that he was prepared to defend by the sword that diadem which had been bestowed by heaven. The unsuspicious testimony of the historians, who, after his defeat, declared him innocent of the guilt of rebellion, may be considered as a satisfactory confirmation of his words; and the revolution, occasioned, not by the machinations of the leader, but by the will of the military community, was rather a demonstration of national independence than of wanton sedition[c]. This able and fortunate general is described by some historians as a Briton, and allied to the Imperial family; his father being a descendant of Leoline, the maternal uncle of Constantine[d]. The poet describes him as a robber: the orator

Maximus, Emperor of Britain, A.D. 383:

his descent, according to the Cambrobritons, from Leoline the uncle of Constantine the Great.

[a] Hieron., in Ctesiam.

[b] Ammian. Marcell., lib. xxviii. c. 3.

[c] Sulp. Sev., Vita S. Martini, c. xx. Orosius, lib. vii. c. 34. Bede, lib. i. c. 9. Greg. Tur., Hist. Franc., lib. i. c. 38.

[d] Μάξιμος ἐκ τῶν περὶ τὰς Βρεταννίας μερῶν, Socrates, lib. i. c. 2. [Maximus, from the parts of Britain.] Rutupinus latro, Ausonius, de Clar. Urb. [The robber from Richborough.] These assertions are supported by the traditions of the Britons and Anglo-Saxons, A.D. 381. Her Maximianus se casere feng to rice. he wæs on Breten londe geboren, Sax. Chron. [A.D. 381. In this year Maximus Cæsar succeeded to the kingdom; he was born in the land of Britain.] Maximus Cæsar regnum accepit, qui natus in Britannia erat, Ethelwerd, lib. i. [Maximus Cæsar received the kingdom, who was born in Britain.] Maximus a Britannia oriundus, Hen. Hunt., lib. i. [Maximus, sprung from Britain.] Germen plantationis Britannicæ, Gildas, c. x. [The seed of British planting.] Erat autem ei pater Britannus, quia Leolinus Constantini avunculus ipsum genuerat, matre vero Romanus, ex utroque sanguine regalem ferebat procreationem, Galf. Mon., lib. ii.

Part I. Ch. XI.

exclaims against him as an exile; but whatever may have been his origin, he had long resided in Britain, where he had repelled the Picts and Scots[a]; and the Britons believed that he was married to Helen, a princess of Celtic race, the daughter of Eudaff or Octavius, Prince of Ewyas and Urchenfield[b], who is said to have obtained an extensive dominion after a long and valiant conflict. Maximus, however, did not continue in Britain after his accession. Ambitious and enterprising, he contemplated the conquest of that portion of the Empire which remained to Gratian[1]; and, mustering all the soldiery whom he could persuade or command to accompany him, so many of the Britons followed his standard, that the island was deprived of the flower of its youth and nobility, and a colonization of Armorica is sometimes thought to have been the consequence of his enterprises. Various tribes of insular Britons had perhaps been settled upon the common lands of the Curiosoliti and the Veneti by the Emperor Constans: Maximus granted a larger portion of the country to Conan Meriadoc[c], to be held by him and his people as a military feud or donation, in the nature of the assignments made to the Limitanean soldiery. The conformity of language between the Armoricans and the Britons leaves little doubt of the affinity of the inhabitants of either shore of the channel; and the similarity of the names of the Provinces of Armorica and of "West Wales" is perhaps a stronger proof that one—but which one?—of these countries was the metropolis, and that the other was the colony. There

A British Colony established by Maximus in Armorica, in which country earlier settlements of Britons had already taken place. Maximus grants a part of the country to Conan Meriadoc.

Constant intercourse between the insular Britons and the Britons of Armorica,

c. 3. [Moreover, his father was a Briton, because he was the son of Leolinus, the maternal uncle of Constantine, but he was a Roman by his mother, and on both sides he was of royal birth.] Maximus iste ex Imperatorio genere descenderat, et Magni Constantini consanguineus fuit, unde et partem Imperii sibi competere calumpniabat, Sig. Gembl. ad an. 583. [That Maximus descended from a race of Emperors, and was a relative of Constantine the Great, and for this cause, he claimed that a share in the Empire belonged to him.] Socrates, lib. v. c. 2, and Zosimus, lib. iv. c. 35, call him an Iberian.

[a] Prosper Aquit.

[b] British Pedigrees, Bib. Harl. 4181. I quote this volume with confidence, because it professes to be compiled from British manuscripts; but I do not pretend to any knowledge of the original sources. The publication of the Welsh genealogies, accompanied by maps adapted to the ancient topography of the country, would throw great light upon British history.

[c] Morice, Hist. de Bretagne, vol. i. p. 6. See also Matt. West.

appears, indeed, to have been a constant flux and reflux of population. The Briton of the Cornwall or the Devon of our island, found a home in the Cornwall or the Devon of Gaul; and the flight of the parents of St. Patrick from the remotest parts of Albania, shews that Armorica was the safe and familiar place of refuge[a]. Nor did the Cymri forget that they and their Armorican brethren constituted but one nation of kinsmen and of friends[b].

the latter country being a place of refuge into which the inhabitants of Great Britain fled from their enemies.

From Gaul, as well as in Germany and the adjoining countries, Maximus was also enabled to collect a numerous army. Gratian fled at his approach; but, hotly pursued by Andragathias, he was slain by the inexorable adherent of Maximus. This victory gave him Gratian's empire. Fixing the seat of his dominion at Trèves, he "stretched out his wings," according to the simile of Gildas, to Spain and to Italy[c], levying taxes on the barbarous nations by the mere terror of his name; and the moderation of the government of the Usurper, during whose reign not a single enemy or rebel perished, otherwise than in fair and open warfare, forcibly demonstrates the willing allegiance of the nations over whom he ruled.

Maximus defeated and slain at Aquileia by Theodosius, A.D. 388; but his

The further details of the exploits of Maximus belong to the general history of the Roman Empire: it is sufficient to observe, that, after his death at Aquileia, Theodosius re-annexed the Province to his dominions, which he transmitted to his son

[a] The example of St. Patrick is important in shewing the early connexion between the Insular Britons and the Armoricans. For the facts relating to the emigration of his parents, see Colgan, pp. 7, 169, 481. Gildas, p. 4, Bede, Hist., i. 12, and Nennius, cap. 23, are the older vouchers for the withdrawing of the insular population into Armorica; and to these may be added the more questionable authority of the Triads. The last immigration is placed by the Chronicle of Mount St. Michael in 513, about the time of the full establishment of the kingdom of Wessex, and corresponds with the statement in the Saxon Chronicle. It can hardly be doubted, however, that the Celtic Gauls were Cymry, and therefore the settlers came amongst a kindred race. The historians of Britanny suppose that the name of "Cornu Gallia" was given to all or the greater part of Armorica, before the arrival of the insular Britons, and that a portion assumed the name of "Damnonia," after the last colonization. (Galland, Mémoires sur l'Origine des Bretons, and Morice, Hist. de Bretagne, vol. i. pp. 551, 580, 583, 852, &c.)

[b] Liber Landavensis. Dugdale, Mon., vol. iii. p. 201.

[c] Gildas, cap. 10.

Part I. Ch. XI.

descendants continue to reign in Britain as the Princes of Reged, Strath Clyde, &c.

Honorius, his successor in the Empire of the West. But the dominion acquired by the "Robber of Richborough" was not entirely lost to his posterity; and the Princes who reigned in Reged[1] and Strath Clyde—in Gwent and Powys—long after the extinction of the Roman power, traced their descent from "Maxim Wledig,"[2] and were honoured by his ancestry[a]. The British accounts are often disfigured by evident inaccuracies; and the fables of the Welsh, which provoked the censure of the Anglo-Norman Critic in the twelfth century, have not acquired more credibility or earned more respect by lapse of time. But history cannot be written unless we assign due bounds to our scepticism as well as to our credulity. I shall not attempt to sift the particular details which are afforded by the genealogies and hagiology of the Britons; but in this instance they are not accompanied by any improbability. There is nothing marvellous in supposing that an individual allied to the British Reguli should have obtained the sovereignty of the island, or that he should have transmitted a portion of his authority to his progeny.

Saxons: reasons for supposing that they had established themselves in Britain before the arrival of Hengist and Horsa.

We must now pause, and advert to that new national power which was arising in Britain. Carausius had repressed the incursions of the Saxons; but the successes of the commander had only a transient effect upon the power of these unwearied enemies; and when that commander became the Emperor, he seems to have introduced a portion of the host as colonists, whom he had combated as enemies in his earlier career. After his death, Britain continued to be the constant object of the "Arch-pirates," the host of Lochlin[3]; and the victories extolled by the Roman writers are the best memorials of the growing ascendancy of their adversaries. If they mowed them down, a new harvest of spears immediately arose; and no one of these triumphs was adequate to prevent the next invasion. The name of the Saxon Shore[b] is, in itself, a sufficient proof of the ascendancy which they had obtained. It has been conjectured that this extensive

The "Saxon Shore."

[a] Constantine, his eldest son, became the Prince of almost all the land between the Wye and Severn; his dominion is thought to have included Gloucester, so that it appears to have comprehended the *Hwiccas* of the Anglo-Saxons. Owen ap-Maxen, as we are told, was the ancestor of the Reguli of Gwent, or Monmouth. The same ancestry is also given to Rhydderch-Hael of Cumbria (see chap. xiv.). Æræ Cambrobrittanicæ, p. 142. British Pedigrees, Bib. Harl. 4181.

[b] Notit. Imp., cap. 72, and see above, p. 297.

tract was so denominated, in consequence of being continually exposed to the incursions of the Saxons; but is it not more reasonable to assume that they had already fixed themselves in some portion of the district? for it is a strange and anomalous process to name a country, not from its inhabitants but from its assailants; and on the opposite "Litus Saxonicum[a]," afterwards included in Normandy, they had obtained a permanent domicile in the neighbourhood of Bayeux. The country afterwards called East Anglia seems to have been the principal seat of these settlements. Perhaps they opened the paths for new reinforcements of Saxons and their allied tribes, who, joining with the Picts and the Scots and the Attacotti, effected that tremendous invasion, not long before the accession of Maximus, by which Britain was reduced to the greatest misery. Fullofaudes, the Count of the Saxon Shore, and Nectarides, the Duke of Britain, were slain in this war, and London[b] was occupied by the enemy. The valour of the Count Theodosius produced a temporary calm; but so extensive were the ravages or conquests of the Northmen, that he was compelled to follow them to the extremity of the British Isles, until the distant Orcades were stained with Saxon gore[c].

New reinforcements of Saxons invade Britain, and are defeated by the Count Theodosius, the father of the Emperor A.D. 367, and again by Stilicho.

No defeat, however, which they sustained, could check their enterprises. The Saxons hovered about the coasts with undiminished audacity, and the inhabitants were exposed to incessant depredations. Stilicho may have obtained some temporary advantages; and in the Panegyric of Claudian, Britannia is heard to congratulate herself upon the security afforded by the prowess of this able General.

[a] Perhaps extending also into Armorica. (Notit. Imp.) The "Saxones Baiocassini," who were the allies, not the subjects, of Chilperic (Greg. Tur., lib. v. c. 27), are probably included amongst the Batavian and Suevic Læti settled at Bayeux and Coutances. Notit. Imp. 90.

[b] Ad Lundinium vetus oppidum, quod Augustam *posteritas* appellavit. Ab Augusta profectus, quam *veteres* appellavere Lundinium, Ammian. Marcell., lib. xxvii. c. 8; xxviii. c. 3. [To London the old town, which *a later age* called Augusta. Having set out from Augusta, which *the ancients* called London.] It is amusing to read these passages at the present day. The old name must have remained in constant use amongst the common people.

[c] Ammian. Marcell., lib. xxvii. c. 8.

Part I. Ch. XI.

Me quoque vicinis pereuntem gentibus, inquit,
Munivit Stilichon, totam cum Scotus Iërnen
Movit, et infesto spumavit remige Tethys;
Illius effectum curis, ne tela timerem
Scotica, ne Pictum tremerem, ne littore toto
Prospicerem dubiis venturum Saxona ventis.

[Me also, when I was perishing from the assaults of the neighbouring races, says Britain, did Stilicho protect, when the Scot roused all Ierne to arms, and Ocean foamed with hostile oar; by his cares it results that I fear not the darts of the Scots, nor do I tremble at the Picts, and from no part of my shore do I descry the Saxon coming on unfavourable winds.]

But the verses of a poet, addressed to a patron, are not to be construed strictly; and this tranquillity, if it ever existed, was of short duration. The island sustained further vexations from the emboldened enemy; and the Suevi, the Vandals and the Alani joined in the ranks of the invaders.

But the attacks of the Barbarians continue; and the Romanized Britons elect Marcus as their Emperor, A.D. 407, who is succeeded by Gratian and Constantine.

Whilst these events took place in Britain, Gaul and Italy were overwhelmed by the hordes of Barbarians. Honorius, unable to afford any aid, was compelled to abandon this distant province to its fate. Excited by their tendency towards independence, and urged by the necessity of a common leader, the Estate of the Soldiery raised Marcus to the purple, and saluted him as Emperor of Britain, a Province whose fertility in Tyrants had become so proverbial[a] as to lead to the supposition, that the historians now extant only record a small portion of the revolutions which it sustained. His speedy fall betrays the factions which prevailed; and Gratian, his successor, was as speedily deposed by the turbulent community whose voice bestowed the imperial authority[b]. Constantine was then placed upon the throne of Britain; a fortune which he owed in the first instance to his well-omened name. His military prowess justified the election which had exalted him above his compeers. The Emperor of Britain rapidly extended his dominion over Gaul; and after having been acknowledged by the Concilium of the Seven Provinces, he crossed the Pyrenees. Spain was assigned

[a] Hieron., in Ctesiam.

[b] Zosimus, lib. vi. c. 2, 34. Bede, lib. i. c. 11. Orosius, lib. vii. c. 40, 42. Olympiodorus, apud Phot. Sozomen, lib. ix. c. 11–13. Greg. Tur., lib. i. c. 9. Sidon. Apoll., lib. iii. ep. 12; lib. v. ep. 9.

to Constans, his son, who exchanged the seclusion of the cloister for the title of Augustus and a transient and anxious sovereignty.

Had Constantine, following the example of Carausius, continued in this island, he might have defied the open power, if not the wiles of Honorius, and whilst his navy collected his tribute from the provinces of the South, the British Emperor would have been safe from any steel, except that which was guided by the hands of the domestic traitor. But with the fate of Maximus before his eyes, he followed in the same dangerous path of continental warfare. When at the height of his fortunes, he sent an embassy to Honorius, excusing his proceedings; and the Emperor of the East was compelled to acknowledge the sovereignty which he had assumed. The revolt of Gerontius, a Briton by birth, and whose name is often found in the genealogies of the Kings of Damnonia, suddenly checked the career of Constantine. This defection, which deprived him of Spain and Gaul, was followed by an unavailing contest with the forces of Honorius, who, contrary to his concession, attacked Constantine as an usurper; and with equal infidelity, afterwards caused him to die by the hands of the executioner, in violation of the treaty by which he had surrendered. Constantine had formed many alliances with the Teutonic nations. Edobincus, a Frankish King, was one of his most powerful and faithful auxiliaries. Gerontius, on his part, cultivated the same connexions; and at his instigation, the Barbarians from beyond the Rhine, by whom we are to understand the Saxons, continued to invade Britain. The inhabitants, however, roused themselves; they regained some of the districts which the enemy had occupied, and the Common Councils of Britain, each under their own Sovereigns, assumed the semblance of a national confederacy[a].

(See below, p. 331.)

The Britons, after the death of Constantine, defeat the Saxons, and become independent of Rome.

It has been supposed that Honorius released them from their allegiance. His recognition was of little importance; for after the accession of Marcus, all political union with the Empire was virtually dissolved, though some of the States or Potentates may have acknowledged a nominal obedience, in the expectation of deriving assistance against their enemies. This hope was vain.

[a] The expressions of Zosimus imply the existence of the Councils; but the whole tenour of the history of Britain, in which the British Princes act such a prominent part, contradicts the supposition of a pure republican government.

Saxons continue to carry on the war in Britain. Hallelujah victory, A.D. 430.

The Saxons, in conjunction with the Picts and the Scots, still pursued their predatory warfare. And the "Hallelujah victory,"[1] gained by the Britons under the guidance of St. Germanus, afforded only a transient respite to the island, and failed to expel the hostile colonists from its shores[a].

[a] Bede, lib. i. c. 21. Usher, p. 179.

CHAPTER XII.

Sources of the earliest Anglo-Saxon history—Kingdom of Kent founded by Eric or Æsc, the son of Hengist—Supposed history of Hengist and Horsa—Aurelian, or Aurelius Ambrosius; his contests with Vortigern for the Imperial dignity—Foundation of the kingdoms of the South Saxons and West Saxons—Arthur—Slow progress of the Saxons—British Kings of Damnonia—Cadwalader Bhendyghed, or the Blessed, the last sovereign of British blood, who claims the title of supreme Monarch of Britain—Egbert, his conquests—Alliance of the Britons with the Danes—British population predominant in the Shires collectively called the "Wealhcynn"—Athelstane expels the Britons from Exeter—Cornwall entirely subdued by the English before the Conquest.

Anglo-Saxon history, its sources anterior to the introduction of Christianity very obscure, consisting principally of fragments of poetical narratives and of genealogies.

Our knowledge of the affairs of Britain previous to the introduction of Christianity amongst the Anglo-Saxons is derived from the most obscure and unsatisfactory evidence. The earliest memorials of the Teutonic nations can only be considered as outlines of the adventures of the prevailing families; and in the age of incipient civilization, this biographical history is rendered imperfect and delusive by the form which it assumed. Like their laws, their deeds of high emprise were recorded in verse; and whether the ode was addressed to the "Giver of bracelets," or the lay recited at the festival of his descendants, the skald would necessarily confine himself to the events which were grateful to the hearer, or which furnished the poet with fit and appropriate materials for his song; all others were allowed to sink into oblivion. That such compositions entered largely into the materials of Anglo-Saxon or English history may be shewn, not merely by the analogies between the customs of the Saxons and the usages of the other northern nations, but by the vestiges and remains which have been preserved. In the Latin versions, the sudden transition from a plain and humble narrative to a pompous and florid description betrays the phraseology of the minstrel's

Part I. Ch. XII.

song; and a proverbial distich indicates the alliteration of the ballad[a]. Some relics have survived in their original text, and enable us to pronounce that the historical poetry of the Anglo-Saxons embraced every possible variety. The tales of the heathen age have perished, but the metrical narratives of a later era are still replete with allusions to the fictions derived from the mythology of Valhalla. The "barbarous and most ancient "strains" which, as we are told by Eginhard, delighted the ear of Charlemagne, formed a part of a great cycle of heroic poems, grounded upon the achievements of the Gothic heroes of the earliest age, and which had been appropriated by every branch of the race. Of those remote and mysterious strains the Anglo-Saxons possessed most ample store. They listened to the song in which the giant forms of the Kings and Chieftains of the Goths, the sons of Woden, the forefathers of their own monarchs, and the Huns, and the Burgundians, were portrayed with more than mortal power, and more than human energy. In the lays of Attila[1] and Havelok[2], and Maiden Rimnild[3], existing in versions comparatively of recent date, we can almost recognize the personages or identify the scene, though the "geste" itself owes its shape to the inventive talent of the minstrel. In a third class, the facts are to be read in an authentic guise, excepting so far as they are glossed by praise, or adorned by description.

Poetry was not, however, the exclusive source of the primitive Anglo-Saxon history; and the deficiency of the metrical narratives has been partly supplied by their genealogies, which, indeed, are in many respects closely connected with their verse. We know how they were rehearsed by the Sennachies of the Gael[4]. The "Duan" of Albania[5] declared the descents of the Scottish monarchs, and yet enables us to connect the fragments of their dubious history[b]. Amongst the Northmen the same practice prevailed, perhaps even to a greater extent, and those portions of the genealogies of the Anglo-Saxon kings which ascend into the heroic

Metrical Genealogies of the Gael.

[a] This is peculiarly the case with the history compiled by Henry of Huntingdon. The chronicle ascribed to Brompton also contains many tales founded upon metrical legends.

[b] This most singular poem may be found in the Prolegomena to O'Conor's Scriptores Rerum Hibernicarum; a work which, whether we consider the learning of the Editor, the value of the materials, or the princely munificence of the Duke of Buckingham, at whose expense it was produced, is without a parallel in modern literature.

age, seem to be excerpted from similar memorial lines. But they must have possessed others in a more strict and historical form. The constitution being grounded upon the privileges of Castes and Tribes, the preservation of these pedigrees must have been an object of importance, and demanding great attention and care.

In most instances, the names of the Anglo-Saxon race are emphatically significant: and those whose roots cannot be traced to the Anglo-Saxon dialect, are probably derived from the nations amongst whom the invaders were commingled. They are often grounded upon that mythology, which had become a poetical language, and which, after the introduction of Christianity, was still so familiar as to be intelligible, though at the same time it had so little hold upon their minds, that the priest could allow it to be employed without creating any profane idea. The alliteration which marked the measure and constituted the harmony of their verse, guided them also in the selection of the appellations of their progeny. In the "kin" of Cerdic, the same initial letter was retained for seven descents, and nearly to the same extent in a collateral branch, which sprang from the main line[a].

In the Anglo-Saxon Chronicles, a Chieftain is always introduced by the deduction of his genealogy. These particulars of ancestry are evidently quoted for the purpose of establishing the truth and genuineness of the narrative. And the brief notices attached to the name of the Anglo-Saxon "Ealdorman" on the runic staff or tablet, preserved in his hall, may often have afforded all the authentic knowledge which the monk afterwards possessed of his mighty deeds.

Aided by general traditions, these materials constituted the basis of the chronicles for the period anterior to the arrival of Augustine and his companions; though not reduced into any regular chronology until after that era. And these memorials are so scanty, that we have only the indication of the events relating to the leaders whose descendants acquired a supremacy over their compeers. It is extremely difficult to form an accurate estimate of the real magnitude of the facts thus imperfectly disclosed. Victories are recorded, but defeats are untold. And in attempting to indicate the course of events during which the

[a] In the genealogy inserted in the Saxon Chronicle, the descent of the line of Cerdic is thus given:—Cerdic, Creoda, Cynric, Celm, or Ceawlin, Cuthwine, Cuthwulf, Ceolwald, Cenred.

Britons were absorbed by the Anglo-Saxon States and Commonwealths, and either incorporated amongst the invaders or placed under their supremacy, we must be often guided, not only by the language, but by the silence of Anglo-Saxon history.

Eric, surnamed Æsc (i.e. Ash-tree), the son of Hengist, an Ealdorman of the Jutes, acquires the dominion of Kent about 488.

After many years had been consumed in the calamitous warfare between the Britons and their invaders, Eric, surnamed Æsc, either from the spear which he wielded, or from the vessel which bore him over the waves[a], succeeded in acquiring the dominion of Kent, a territory wrested from the possession of Gwrtheyrn or Vortigern. Eric appears in the chronicles as an Ealdorman of a Clan of the Jutes, one of the Belgic tribes settled in the Cimbric Chersonesus. Claudian[1] and Marcellinus[2] probably describe them by the collective denomination of Saxons; and their own descendants, the English, subsequently included them amongst the pagan Danes. Aided by the valour of his sturdy and ferocious followers, the power of Eric was so firmly established in the fertile though narrow Province, which he and his people had occupied, that he was styled King of the "Cantware," and universally acknowledged as the founder of the dynasty by whom the country was afterwards ruled.

(See above, p. 33.)

Oiscingas or Uscingas, Kings of Kent.

449. Isle of Thanet or "Ruim" granted by Vortigern to the sons of Wihtgils, Hengist (i.e. War-horse) and Horsa (i.e. Horse), Ealdormen of the Jutes, upon condition of performing military service, in same manner as the Romans were accustomed to make similar donations to the Barbarian Læti. (See above, p. 292.)

The ancestor of the "Oiscingas" or "Uscingas," for such was the patronymic given to the Kentish monarchs[b], was not, however, the first invader. The father and the uncle of Eric had obtained a grant of the island of "Ruim" or Thanet, from Vortigern, who bestowed this tract upon the Jutes, as the price of the services which they were to render against the Picts and Scots. Vortigern at this time was also engaged in warfare with a formidable rival. Aurelian, or Aurelius Ambrosius, the descendant of one of the Emperors who had reigned in Britain, and whose origin, valour, and virtues are recorded by the faithful testimony of Bede[c],

[a] Æsc or Ash-tree, in its secondary sense, bears either of these meanings; and Ihre and Lye have amply illustrated its various applications and derivatives. Æscmenn, a term which Adam of Bremen uses in the form Ascomanni, was the name given to the Pirates or Sea Rovers of Scandinavia. Æsc is sometimes used absolutely to designate *Man* or *Mankind*.

[b] Bede, lib. ii. c. 5.

[c] Gildas, c. 25. Bede, lib. ii. c. 16. By Geoffrey of Monmouth this Hero is called Aurelius Ambrosius; by Gildas, Ambrosius Aurelianus. The variation is of little importance; but slight as it is, Ritson (Life of Arthur, p. 50) makes it the subject of a cavil. It has

appears to have been a claimant for the supremacy of the island, or rather for the Imperial dignity. A Roman party, whether composed of Legionaries who had continued to occupy the Colonies, or of the Romanized Britons of Lloegria, supported the rights of Aurelius against the pretensions[a] of Vortigern; and the latter, pressed by his personal opponents, as well as by the enemies of his people, rejoiced in accepting the assistance of the Jutes, these hitherto hostile strangers.

Dissensions between Aurelian (or Aurelius Ambrosius) and Vortigern, the former descended from one of the Roman Emperors or "Tyrants" of Britain.

In the onset of the war, the Jutes performed their engagement with valour and fidelity; and after defeating the Pictish and Gaelic hordes, who had advanced to the centre of the island[b], it is said that they improved the victory, by pursuing the enemy to the mountains of Caledonia and the Orcades. The importance of their services rendered the adventurers but too sensible of their own strength. Further demands succeeded, which exhausted the liberality or alarmed the caution of the Britons; and the ill-fated alliance between the islanders and their old enemies, was converted into an inveterate hostility, which ended by giving to the Jutes the possession of the Province. Yet this was not gained until they had sustained many fluctuations of fortune; they were more than once compelled to take refuge in their vessels, and expelled from part, if not from the whole of the country; and though the prowess of Hengist and Horsa enabled them to resist the might of the Britons, still the invariable tradition of English history, which designated Æsc or Eric as the root of the sovereign family[c] is an unquestionable evidence that the Royal authority was not established until his reign.

Hengist and Horsa: Poetical (or fabulous) accounts of their settlement in Britain adopted by the Chroniclers as history;

With respect to the earlier chieftains, if we read their adventures as they have been transmitted to us by the chroniclers, we might as well consult the Æneid in order to ascertain the facts which attended the foundation of Carthage. Even the relation

been supposed that he was the son, or perhaps the grandson, of Constantine (p. 320).

[a] Or perhaps the Romans constituted a third party distinct from that of Aurelius. Gorthigernus regnavit in Britannia; et dum ipse regnabat, urgebatur a metu Pictorum Scottorumque, et a Romanico impetu, necnon et a timore Ambrosii, Nennius, c. 28. [Vortigern reigned in Britain, and while he was reigning, it was obsessed by the fear of the Picts and Scots and by the attack of the Romans, and by fear of Ambrosius.]

[b] At Stamford in Lincolnshire. Hen. Hunt., lib. ii. p. 8.

[c] Nennius, c. 45. Bede, lib. ii. c. 5.

Part I. Ch. XII

sanctioned by the authority of Bede himself, has only the appearance of an ancient lay. Rowena's fatal kiss and the device of the bull's hide, which gained the site of "Thong-Castle,"[1] a legend which has flown from clime to clime, may be almost as readily admitted to be true, as that part of the tale—less romantic indeed, but scarcely less incredible—which tells how the British Vortigern despatched an embassy to Germany, inviting the assistance of those confederates, speaking a strange tongue, and whom he only knew from their inveterate enmity. Nor can we neglect the circumstance that the names bestowed upon the sons of Wihtgils seem to be poetical epithets, rather than real denominations[a]; both have the same meaning, and both only designate the snow-white steed, from whom their ancestors sought the omen before they entered the conflict, and whose form, still constituting the heraldry of Kent, adorned the standard which led them forth to victory[b].

their names only poetical epithets.

Somewhat more plausibility might be conceded to the narrative which represents these Chieftains as exiles from their own country[c], were it not that this mode of accounting for the northern emigrations seems to have been a favourite tradition or hypothesis, usually applied by popular belief to any expeditions effected by the same race; and considered as a ready mode of explaining their ceaseless inroads[d]. The question, however, may appear of little

[a] The words are synonymous, and both hengest and hors were employed in Anglo-Saxon to designate the same animal. (Lye.) Usage distinguished them in later dialects; the German *Hengst* is a stallion; the Danish *Hors* is a mare.

[b] Proprium gentis equorum quoque præsagia ac monitus experiri: publice aluntur isdem nemoribus ac lucis, candidi et nullo mortali opere contacti; quos pressos sacro curru, sacerdos ac rex vel princeps civitatis comitantur hinnitusque ac fremitus observant, nec ulli auspicio major fides, Tacitus, Germ. c. 10. [It is peculiar to this people to seek omens and monitions from horses. White horses are kept at the public expense in those groves and woods, and are defiled by no mortal work; but harnessed to the sacred chariot they are attended by the priest and the king or the chief of the state, who observe their neighings and snortings, nor is there greater confidence in any augury.] The White Horse, as is well known, yet constitutes the insignia of the modern County of Kent; and this example affords a strong support to the opinion that the armorial bearings of modern nations are derived from their primitive emblems.

[c] Nennius, c. 28. [d] Guil. Gemeticensis, lib. ii. c. 1, &c.

consequence, nor indeed would it have deserved much investigation, if the personal adventures ascribed to the fabled heroes of Gothic song had not been rendered so prominent in our monkish chronicles as to interrupt the continuity of history, and to conceal the true nature of the transactions between the British sovereign and the Teutonic barbarians.

Hengist and Horsa, if thus we are to call them, when their achievements are deprived of these romantic adornments, resume their real station as successors of the many Saxon warriors by whom Britain had been attacked since the reign of Carausius, but whose deeds are only shadowed by the Roman historians, and whose lineages are forgotten.

Settlements of the "Three tribes of Germany" on the shores of Britain; distinct enterprises of independent adventurers.

The cession of the isle of Thanet, a Lætic or feudal grant, according to the Roman policy, adopted by the Romanized Britons of Lloegria, afforded a firmer basis for their power; yet the conquests effected by the original Commanders of this Lætic colony, who never extended their kingdom beyond the boundary of the modern Shire, are of less importance in the general series of events than the achievements of Ella and Cerdic, the Leaders by whom the Saxons were established in the South and West, or of those who laid the foundations of the Anglian States, of Mercia, and of Northumbria.

Each band was headed by its own Chieftains; and each Chieftain, accompanied by his kinsmen, conquered for himself, his brethren, and his children, without aid from the other Adventurers, owing no gratitude, acknowledging no supremacy. Even as they began, when the host of Woden first advanced against the power of Rome, so they continued when the Empire had fallen; and so their course was resumed, upon the selfsame shores, when the difference of religion, and the alterations produced by habitation amongst another race, taught the Jutes and the Angles of Holstein and Jutland to consider their English kindred as strangers and enemies.

Britons: their general policy not affected by the early settlements of the German tribes.

These early inroads affected the general policy, or rather misrule, of the Britons as little as the first conquests of the Anglo-Normans amongst the Gael of Erin. Absorbed in their mutual dissensions, they never recollected the existence of the enemy, except when they felt his sword. The moral insanity destined to work the downfall of nations works according to the degree of civilization which they have obtained. The factions of the jarring Senate accomplish the ends of fate as speedily as the severance of the army under the banners of civil war. Provinces may be

Part I. Ch. XII.

lost with more safety than principles; and the partizan who labours to defeat the measures best calculated to avert a public calamity in which he himself will be involved, because they proceed from a political opponent; or to vilify and destroy the character of the statesman whose wisdom is excited in rescuing the institutions which he himself most prizes, enacts the character which, in a more barbarous age, belongs to the recreant prince or the faithless general.

Aurelian, or Aurelius Ambrosius, supposed to be the individual in whose person the succession of the Western Empire was continued.

Aurelius Ambrosius seems, after the death of Vortigern, to have obtained the predominance for which he contended; and it has been supposed, by writers of no mean authority, that the sovereign who reigned in this remote portion of the Roman world, continued the legitimate succession of the Empire of the West[a]. Defending his country with obstinate valour, the Britons acquired an unwonted confidence; and the memorable battle of the "Mons Badonicus,"[b1] checked the progress of the enemy, and delayed the subjugation of the West. Yet the pernicious feuds between him and the other British Chieftains had continued for twelve years after the death of Vortigern[c]; and about the time when Eric began to reign, another small kingdom had been formed out of the dominions appendant to Andredes Ceastre[2], a Roman colony which had reverted to the British power. When taken by storm, all the inhabitants were put to the sword, the edifices were razed to the ground, and so completely was this ill-fated city demolished, that even the keen eye and searching enthusiasm of the antiquarian topographer is unable to detect its ruins[d]. Saxon England offers few examples of a similar vengeance; and we must discover the provocation in the valiant resistance of the Britons, who withstood the invaders with such determined bravery, that Ella[3], and Cissa, his son, were compelled to obtain fresh reinforcements from their native country, before they could obtain the victory.

Defeats the Saxons at Bath, A.D. 520.

South Saxons: their kingdom founded by Ella, 477–490.

Ella, the first English "Bretwalda," or Emperor of Britain.

Ella never annexed any other territories to his kingdom of the South Saxons; yet favoured perhaps by the jealousies and

[a] This is the opinion of Baronius[4] (ad an. 477), which I quote, without venturing to maintain.

[b] Gildas, c. 26. Bede, lib. i. c. 16. The former of these writers places the Mons Badonicus near the Mouth of the Severn; and in the loose language of early writers, this is surely sufficient to identify it with the heights above "Caer Badon" or Bath.

[c] Nennius, p. 118.

[d] Sax. Chron., ad an. 491. Hen. Hunt., lib. ii. Dallaway's Sussex.

enmities of the British Princes of the South, he was acknowledged as Bretwalda, or Emperor of Britain[a]. But the preponderance obtained by the monarch could not be transferred to his successors, and after a short period, the kingdom of the South Saxons sank into an appendant principality, and disappears from the annals of Anglo-Saxon history.

Cerdic and Cynric, "Ealdormen" of the Old Saxons, found the kingdom of Wessex, 494–508.

More formidable attacks were impending upon the Britons from another hostile colony of the "Old Saxons," guided by the two "Ealdormen," Cerdic and Cynric, whose descendants obtained the sovereignty of Britain; and the misfortunes of the Chieftains whose dominions constituted the nucleus of the future kingdom of Wessex, or the "Gewissi,"[b] may be found commemorated in the Elegies of Llywarch Hên and in the Anglo-Saxon Chronicle. Geraint or Gerontius, a name frequently occurring amongst the princes of Damnonia[c], appears, if we may judge from the praises bestowed upon him by the bard, to have opposed a formidable resistance to the "white dragon" of Germany; but the "red-stained hero," the foe of the Saxons, whose noble birth was long recollected by his enemies, perished in the defence of Llongborth, the "haven of ships," against a Chieftain ambiguously denominated "Porta" in the Chronicle, but who probably obtained this epithet from the seat of the conflict. Nazanleod, or Natanleod, who is called a British King by the Saxons, but who is unnoticed by his countrymen, was slain some years afterwards in a great battle, and the territories thus gained were immediately occupied by the Saxons and the Jutes, together with the neighbouring island of Wight, which, bestowed upon Wihtgar, the nephew of Cerdic, was erected into a dependent Kingdom. The invaders came over in numerous cohorts, and divided and settled the

Geraint ap Erbin slain at Llongborth by Porta, Bieda and Mægla, 501.

[a] Bede, lib. ii. c. 5.

[b] "Gewis" was the ancestor of Cynric in the third degree. Bede informs us that the West Saxons were anciently called "Gewissæ," and so they are not infrequently denominated. It does not diminish our perplexities to find that the Saxon name *Cerdic* is evidently the same as the British Ceretic or Caradoc; and that some of the British princes claimed their descent from this very Gewissa, whom they describe as a female.

[c] "Tywysawg Dywnaint." See the first elegy of Llywarch Hên. Dr. Owen Pughe supposes that Llongborth is the modern Portsmouth. The sovereigns of Dyvnaint appear generally as the preponderating princes of the West. The Bard speaks as if he had been present at the battle.

Part I. Ch. XII.

country. But the Celtic name of the Hampshire Avon, marks the original frontier between the Saxons and the Britons; and its stream was the boundary which divided the dominions ruled by Constantine, the "Tyrant of Damnonia[a]," from the dominions of his enemies. The notices of the cities taken by the Saxons, and the rare allusions to the monarchs whom they encountered, afford only a slight indication of the direction in which their empire was extended. The Britons continued in a state of extreme disunion, as portrayed in the Epistle of the "querulous" Gildas[1], according to whom the sins of the people, both clergy and laity, scarcely received an adequate punishment from the oppressions of their rulers; and the kings themselves, stained with every vice, are represented as the worst calamities of the afflicted country.

The Hampshire Avon, the original boundary between the Saxons and the Britons of the West.

Maglocunus[2], who is the subject of the most laboured and violent invective, had at this period been exalted to the dignity of supreme monarch. But amidst the sovereigns who are noticed by the coeval historian, we seek in vain for Arthur, who holds so conspicuous a station in the historical legends of the Britons. In parts of the island the most remote from each other, the traditions of the people have given to Arthur a local habitation and a name; and even in the distant Sicily[b3] the wanderer in the forests of Etna was awe-struck by the visionary palace, in which the enchanted and entranced monarch, yet bleeding from the wounds received in the disastrous conflict with the Saxon "Childeric,"[4] awaited the appointed day and the fatal hour, when he was to be restored to his crown and countrymen. Twelve great conflicts are briefly noticed by the British historians. They ascribe to Arthur the battle in which, as we know from better authority, Aurelius Ambrosius[5] was the victor. Others are

Arthur not named by Gildas,

although there is no reason to doubt his existence, the scenes of the battles ascribed to him by Nennius, being, in many instances, identified.

[a] Gildas, p. 10. Constantine is a name often occurring in the British royal families. Another Constantine, King of Cornwall, who abdicated his throne, and afterwards preached the Gospel to the Picts and Scots, has been supposed to be the Constantine of Gildas. His life is only known from his legend, as given in that most rare and valuable monument of ecclesiastical antiquity, the Aberdeen Breviary, from whence it is reprinted in the Acta Sanctorum (March, vol ii. p. 64). The Irish Annals notice the "Conversio Constantini ad Dominum, A.D. 588," which may mean either his death or his reclusion.

[b] We owe this tale to the industry of Gervasius Tilburiensis (Otia Imper., p. 921).

placed in the North[a1]; and the scenes of those which took place on the banks of the Glen and the Douglas[2], the black water of Deira, at Wedale near Melrose, beneath the walls of the "City of Legions,"[3] and near the Coit Caledon, or Caledonian forest[4], can be identified with more certainty than usually belongs to narratives of equal antiquity.

We can neither doubt the existence of this Chieftain, nor believe in the achievements which have been ascribed to him; yet any attempt to introduce the fantastic monarch of the Round Table into the pages of authentic history, is as fruitless a task, as if we were to delineate Charlemagne from the geste of the veracious Turpin; and it is a singular, and perhaps not altogether an uninstructive coincidence, that the same bright Arctic constellation was viewed both by Celts and Teutons as Arthur's Plough and Charles's Wain. Without pursuing an inquiry interminable as the chase of the visionary hunters in the forest of Broceliande[5] it will be sufficient to observe that the confusion of personages—the common practice of ascribing to one individual the exploits of many of the same name—and the reminiscences of mythological traditions, were probably the concurrent causes which contributed to create the Arthur of historical romance.

When these legends were first promulgated by Geoffrey of Monmouth[6] in their new form—for all the evidences which destroy the textual authenticity of the "Gesta Britonum" confirm the supposition that the work is really founded on British traditions—they alarmed the learning of the cloister; and even the indulgent credulity of the Monk[b] refused to admit the existence of a potentate,

[a] By Nennius.

[b] Higden thus inquires, Cæterum de isto Arthuro, quem inter omnes Chronographos solus Gaufredus sic extollit, mirantur multi quomodo veritatem sapere possint, quæ de eo prædicantur; pro eo quod si Arthurus, sicut scribit Gaufridus, terdena Regna adquisivit, si Regem Francorum subjugavit, si Lucium procuratorem reipublicæ apud Italiam interfecit, cur omnes Historici Romani, Franci, Saxonici, Britonici, tot insignia de tanto viro omiserunt, qui de minoribus viris tot minora retulerunt. p. 225. [But, concerning that Arthur, whom Geoffrey alone among all historians thus extols, many wonder how they can accept as true those things which are told of him. For if Arthur, as Geoffrey records, acquired thirteen kingdoms, conquered the King of the Franks, and slew Lucius the procurator of the republic in Italy, why have all the historians, Roman, French, Saxon and

Part I. Ch. XII.

whom no Fasti acknowledged, and no chronicler had known. Yet within a very short time afterwards, they were universally accredited throughout Europe, and received without hesitation. And during the civil wars and dissensions of England, even almost unto our times, the feigned and fallacious prophecies of the British Merlin were consulted with respect; and employed to rouse the hopes and encourage the zeal of the secret confederates and active partizans, who supported a popular pretender or an exiled king.

Returning from these pleasing yet unsatisfactory visions, to the real transactions of humankind, it appears that the victory which Cynric, the son and successor of Cerdic, obtained over the Lloegrians at Old Sarum, was followed by the subjugation of the adjoining territory. Cuthwulf is stated more explicitly to have established himself in the country beyond the Thames; and four towns or cities, then of considerable importance, together with their adjacent dependencies, were all occupied during one campaign[a]. In these districts, the conquerors, from their relative position towards the "Middle Saxons," acquired their geographical designation of West Saxons, a name which they ever afterwards retained; though the subsequent annexation of these territories to the kingdom of Mercia deprived the appellation of its original propriety. Soon afterwards Commail, Condidan, and Farinmail[b] fell in battle; Chieftains of the west, from whom the "Frank could "hear no word of peace," and who had been roused to more than common unanimity by the sense of more than common danger.

552. Cynric conquers Sarum.

571. Cuthwulf establishes himself north of the Thames,

from which establishment this Saxon kingdom acquired the name of Wessex, i.e., in relation to Middlesex.

577. Gloucester, Cirencester, and Bath taken by Cuthwine

But they could not avert the adverse fortune of Britain. Gloucester, Cirencester, and Bath, all of which had been castellated by the Romans, passed beneath the dominion of Cuthwine and

British, omitted all the distinguished deeds of so great a man, seeing they have reported so many lesser deeds of lesser men?]

[a] After a battle at Bedford, he took the towns of Lygeanburg (Lenbury), Ægelesburg (Aylesbury), Bænesingtun (Bensington), and Egonesham (Eynsham). Sax. Chron., Flor. Wigorn., &c.

[b] Farinmail, or Fernvail, appears to have been a King of Gwent or Monmouth. (Langhorne, p. 115.) The valour and the death of Cyndyllan (Condidan), King of Pengwern, or Shrewsbury, form the subjects of one of the Elegies of Llywarch Hên. Caranmail (Commail) is noticed in the same poem (p. 99). These coincidences, which afford satisfactory proof of the authenticity of the poems ascribed to the Bard, were first pointed out by Mr. Turner. It is remarkable, that in this poem the Saxons are called *Franks*.

Ceawlin. The possession of these Burgi, from whence the Romanized Britons had harassed the settlements of the West Saxons, contributed greatly to the strength of the rising Kingdom. It is doubtful, however, whether two, at least, of those cities were not lost again by the West Saxons; and it appears, that they were held by the "Wealh," until won a second time by the Angles of the Marches. In the battle of Fethanleagh the Saxons were defeated with great loss. Cuthwine was slain[a]; and though Ceawlin is recorded to have acquired great wealth and plunder, in a subsequent predatory incursion, yet it is evident that a check was given to the growth of the Saxon power. They possessed the advantage of fighting against a disunited enemy; and some of the Lloegrians or Romanized Britons had even coalesced with the "Franks" against the Cymri[b]. But the Saxons themselves were equally discordant; and their general career was retarded by the dissensions which prevailed amongst them. At the very time when the war was raging most fiercely between the Britons and the men of Wessex, Cuthwine and Ceawlin were engaged in a contest with Ethelbert of Kent for the supremacy of the island. So slight, indeed, was the tie which bound the "three tribes of Germany," that when Ceolric, the nephew of Ceawlin, and ruler of an apanage, or dependent kingdom, rose against his relative, or perhaps attempted to claim the succession, the Angles[c] who espoused his party, confederated, cordially and unreluctantly, with the Britons, against the King of Wessex. Even the people of the North assisted in the war. Aidan, King of the "Scots inhabiting Britain[d]," advancing towards Wessex,

and Ceawlin, but probably regained by the Britons.

584. Battle of Fethanleagh: Cuthwine slain, and progress of the Saxons checked by the Britons.

591. Angles and Britons unite against the Saxons, and with the aid of the Scots defeat them at Wodnesbeorg, or Wodensdike (Wilts).

[a] Huntingdon describes the defeat. Pugnatum est autem perniciose et horribiliter utrinque; *Cutwine* gravi multitudine oppressus prostratus et occisus est. Victi sunt igitur Angli et fugæ dati, p. 181. [But the fight was destructive and horrible on both sides; *Cuthwine* was overwhelmed by great numbers, thrown to the ground and killed. The Angles therefore were conquered and put to flight.] The Saxon Chronicles notice the death of Cuthwine, also called Cutha, but are silent as to the event of the battle.

[b] Llywarch Hên's Elegies, p. 85.

[c] Conspirantibus tam *Anglis* quam Brittonibus apud *Wodnesdik*, Will. Malm., de Gestis Regum, lib. i. c. 2. [Both the *Angles* and the Britons uniting their forces at *Wodensdike*.] These Angles were probably Mercians.

[d] Bede, lib. i. c. 34.

Part I. Ch. XII.

joined his forces to this confederacy[a]; and Ceawlin, unable to contend with the united armies of his kinsmen and his enemies, abandoned his crown, and died a fugitive and an exile.

Ceawlin expelled from his kingdom.

This remarkable conflict took place at Wodnesbeorg, or Wodensdike, an ancient rampart[1], similar in construction to the Giant's Dike of East Anglia. Many other similar fortifications, of less extent, are also found in Wiltshire; and the antiquary is uncertain whether to refer them to the Anglo-Saxon era or to the primeval population of the country.

Roman tactics and modes of warfare retained by the Britons.

In all these wars the Britons availed themselves to the utmost of the lessons learned from their ancient masters; and though their ranks, skilfully arranged according to the tactics of old Rome, were broken by the impetuous and irregular attacks of the Saxons, yet the frequent and obstinate conflicts were almost as fatal to the victors as to the vanquished[b].

[a] Fordun, lib. iii. c. 29, is the voucher for the aid afforded by Aidan. It may be objected against the authority of the Scottish chronicler, that he confounds the battle of "Wodnesbeorg" with the "Bellum Miathrorum," related by Adamnan in his Life of St. Columba (lib. i. c. 8). Pinkerton and Usher have failed to ascertain the real seat of war; and from the obscurity of the subject, Fordun's error probably arose. But the very important fact, that the Picts and Scots were brought in contact with the men of Wessex, is singularly established by what is told of Ceolwulf, the successor of Ceolric (A.D. 597): Ceolwulfus sceptra regni Occidentalium Saxonum suscipiens, quatuordecim annos tenuit, et vel Anglis aut Britonibus vel *Pictis* aut *Scotis* bellum semper intulit, Flor. Wigorn., who, as usual, translates the Saxon Chronicle. [Ceolwulf obtained the sceptre of the kingdom of the West Saxons and held it fourteen years, and was always waging war either against the Angles or the Britons or the *Picts* or *Scots*.] Though I follow the respected opinion of Camden and Sharon Turner, I will not maintain that Wodnesbeorg is really to be placed in Wiltshire. Did the Kings of Wessex penetrate to the north, and subdue or occupy a part of Northumbria? or was the battle fought in Wales? Some manuscripts read *Woddes*beorge—Wat's-dike?—an entrenchment running parallel to Offa's Dike.

[b] Thus Huntingdon, in narrating the battle of Wodnesbeorg, Cum autem Britones more Romanorum acies distincte admoverent, Saxones vero audacter et confuse irruerent, p. 181. [But while the Britons in Roman fashion advanced their line of battle in regular order and the Saxons charged intrepidly without formation.] In the battle of Beranbyrig the British army was divided into nine

A great battle between the men of Wessex and the Britons, was fought not long afterwards, in which the latter were defeated with great slaughter. Like many other of their sanguinary conflicts, the invasion passed away like a summer storm. No territory was gained; and nearly half a century elapsed without any further hostilities against the Britons. The power of the West Saxons indeed was much depressed. Penda, the pagan King of the Mercian Angles, and perhaps himself allied to the Cymri, was their implacable and uncompromising enemy. As the country had been won from the Britons, it had been formed into distinct principalities, whose Ealdormen or rulers often claimed or obtained the royal title, and who were only imperfectly restrained by the allegiance which was claimed by the nominal sovereign. They had also been compelled to submit to the supremacy of Edwin and of Oswald; and five "Kings" of Wessex had fallen in one battle-strife with the Angles of Northumbria, an event which at once displays their weakness and its cause[a].

614. Battle of Beandune; Britons defeated.

625–656. Depression of the power of Wessex; harassed by Penda, King of the Mercian Angles (probably allied to the Britons), and also compelled to submit to the supremacy of Edwin and Oswald, of Northumbria (see Chap. XIII.) Wessex, contained many states whose rulers assumed the royal title; five slain in battle with Edwin. 626.

Coerced by the Saxons, the Britons were yet unbroken as a population; and when Cenwealh recovered his kingdom, whence he had been expelled by Penda, the "Waters" of either Avon seem still to have constituted the boundaries of the tributary kingdoms of the Western "Wealh." The recent reverses which Cenwealh had sustained, gave to the Britons the hope, in the words of Malmesbury[b], of recovering their pristine liberty. Assembling all their forces, they encountered the English, and they repelled the first impetuous attack of their enemies. But Cenwealh collected his forces, and the "progeny of Brutus" sustained an incurable wound[c].

658. Britons, tributary or subjugated by the Saxons, make a great effort to recover their liberty; defeated by Cenwealh in the great battle at Penn (Devonshire), by which their power was entirely broken.

"acies": Virisque sagittariis et telorum jaculatoribus equitibusque, jure Romanorum depositis, p. 180. [With archers, and slingers, and horsemen, drawn up in the fashion of the Romans.] In these and many other descriptions of battles, Huntingdon had better and more ample Anglo-Saxon chronicles than those which now exist. Huntingdon has been much decried. It is contrary to all rules of criticism to deny the authenticity of an ancient compiler, because he quotes authorities who are lost to us, or because he relates facts which do not suit our theories.

[a] Bede, lib. ii. c. 9. Sax. Chron., ad an. 626. See Part II., *Proofs and Illustrations*, p. 333.

[b] De Gestis Regum, p. 6.

[c] Et facta est super progeniem Bruti plaga insanabilis in die illa,

Part I. Ch. XII.

By this victory, the state of the Durgwyr, the Durotriges of the Romans, yielded to the supremacy of Wessex. The poetical language of the historian implies that the subjugation was consequent upon the total extinction of the ancient national rulers; and the British inhabitants, no longer governed by their own Princes, passed beneath the sway of the English Ealdormen and the sovereignty of the Saxon Kings.

676–680. Cadwalader Bhendyghed, the last of the British Sovereigns who claimed the title of supreme Monarch of Britain, resigns his crown.

Hitherto there had always been some one Monarch amongst the Britons of the west, who had claimed the supremacy of Britain. They had seen kingdom after kingdom yielding to the stranger, but still the successors of Aurelius Ambrosius asserted the right to an Empire, which had now shrunk into the shattered Provinces of the west. But their spirit was conquered. The Lloegrians are accused by the bards of union with the Saxons. It is probable they consisted, in this part of the island, of a Belgic race governed or oppressed by a Celtic nobility, or soldier-caste, and who therefore cared but little for the calamities of their superiors. And about this time, as far as can be ascertained from the vague chronology of the Welsh chronicles, Cadwalader Bhendyghed, or the Blessed, the last "crowned monarch" of the Cymri, borne down by calamities, influenced by the prophecies of the fabled Merlin, or perhaps yielding to a better feeling, abdicated his uneasy throne, and retired to Rome, where he died in monastic penitence[a].

Damnonia, however, whose sovereigns had been so long predominant among their compeers, was not yet entirely subdued; and the reinforcements which arrived from the kindred Armorica, under the Princes whom the Welsh annals name Ivor and Ynyr, emboldened them to attack the forces of Wessex.

681, 682. Confederacy of the Britons against Centwine; he defeats them totally; a part of the population (or more probably of the nobility) takes refuge in Armorica.

The Princes of Gwent and Morganwy, on the northern shore of the estuary of the Severn, had become the vassals of the Kings of Wessex, to whom they rendered tribute and service. The yoke was tolerable, but it was borne with impatience. A new national war began. The whole forces of the Britons were raised against the Kings of Wessex; and they "rebelled," but with ill-omened valour, against the authority which they had hitherto

Hen. Hunt., p. 182. [And on that day an incurable wound was inflicted on the progeny of Brutus.] The battle took place at Penn, in Devonshire. The "Brytwealas" were driven as far as the river Pedrida, or Parret.

[a] Caradoc of Llancarvan, ed. Wynne, p. 11.

obeyed. Centwine, defeating the Britons of the north, drove those of the west to the sea; and another emigration of the British population, or more probably of their leaders, to the opposite coast of Gaul, seems to have been the consequence of the victory, which gave to him a direct dominion over "Dyvnaint" or "Deunan," as far as the Exe, and compelled the other British States to pay a heavier tribute, and render additional homage to his power[a].

Damnonia, Dyvnaint, or Deunan (Devonshire), conquered as far as the Exe.

The succession of British authority is faintly indicated by the account of the battles between the Saxon Ina, and Geraint or Gerontius. Ina, indeed, appears to have been acknowledged as the ruler of all the Britons of the West. He founded the bishopric of Sherborne, which, in its origin, included the greater part of the British provinces; and the Welsh introduce a singular perplexity into history by identifying him with their "Ivor." There are, indeed, many points of great obscurity attending his origin. He appears as a legislator in the lifetime of his father, who had no regal title, and never was acknowledged as a King. Descended from a royal line, he acquired the crown of Wessex by prowess, and not by hereditary right. Our most authentic historians, and his own declaration, differ in the accounts of his own immediate ancestry. And it is within the limits of historical probability to suppose that his maternal descent from some British Princess may have afforded a ground for the confident assertions of the British chronicles[b].

710. Geraint, King of the "Wealas," defeated by Ina, King of Wessex.

688, 689–726. Ina, King of Wessex; uncertainty of his origin.

[a] Ethelwerd, lib. ii. c. 9. Sax. Chron., ad an. 601. Will. Malm., Vita St. Aldhelmi, p. 14. When the chronicles of South Britain speak of the *North Wealas*, they usually apply the term to the whole of modern Wales, as considered in relation to *West* Wales, or Cornwall, Devon, &c. Thus, in another passage, Malmesbury (de Gestis Regum, p. 19), after narrating Egbert's victories over the Cornish, states that he subdued the "Aquilonares Brittanos qui a prædictis brachio maris dividuntur." [The Northern Britons, who are separated by an arm of the sea from the aforesaid.]

[b] Ina qui Cinegisli ex fratre Cuthbaldo pronepos, magis pro insitivæ virtutis industria, quam successivæ sobolis prosapia in principatum ascitur, Malm., de Gestis, i. 2. [Ina, who was great-grand-nephew of Cynegisl by his brother Cuthbald, is summoned to the kingdom rather through the activity of his innate valour, than from his relationship to the royal family.] Caradoc, or the chroniclers who pass under his name, represent "Ivor" as son of Alan of Armorica, and say that he married "Centwin's cousin, Ethelburgha," Wynne's Caradoc, p. 15. In the preamble of Ina's statute or capitulary, he states that it was enacted with

Part I. Ch. XII.

Notwithstanding their reverses, the Britons of the West repelled the encroachments of the Saxons with so much vigour, that the vexations which Cynewulf suffered from their hostilities, were felt as national misfortunes, to be expiated or averted by devout liberality[a]. Egbert, the eighth Bretwalda, who acquired a firmer dominion than any of his predecessors, pursued the Britons with inveterate hostility. He "herried" the land—these are the words of the Chronicle—from east to west[b]. Yet his devastations made no lasting impression beyond the Tamar; and as the victors, who record the conflict, are silent with respect to its issue, it is probable that Wessex did not gain any further

827. Egbert subdues all Britain south of the Humber; overruns the whole of the British territories.

the advice of Cenred, his father. But Malmesbury (de Gestis Pontificum, lib. ii.) describes Ina as the son of Cissa, the founder of the Abbey of Abingdon. Nor do we stop here in our difficulties. Ceadwalla of Wessex was the son of Coenbyrht, or Kenbert (Sax. Chron., ad an. 685, and Florence). And the chronicles add that Mul, or Mollo, also called *Wolf* (Brompton, p. 741), and Mulus (Thorn, p. 1770), burnt by the Kentish men, was the brother of Ceadwalla of Wessex, the immediate predecessor of Ina; and yet, a short time afterwards (Sax. Chron. and Florence, ad an. 694), we find that the men of Kent paid a large sum of money to Ina as the were or blood-fine for "Mul," *his* brother. The amount of this blood-fine is stated with singular variations in the different authorities; 30,000, 4000, 3750 pounds [of silver], 30,000 marks of gold. Did the three names of Cenred, Coenbyrht, and Cissa belong to one person; or was there more than one Ina? This is a question which cannot be easily answered. Cadwalader himself is confounded by the Cymri with the Saxon Ceadwalla. The British narratives are wholly irreconcileable to the Saxon chronicles; yet it cannot escape notice, that Ceadwalla is a name often repeated in the British genealogies, and never again appropriated by a Saxon. These coincidences seem to be more than accidental: but the only use to which they can be applied is to fortify the conjecture, that in the earlier periods the Britons and Saxons were much more closely connected than their respective descendants have been willing to believe; and, as appears from the statements of the blood-fine, the ancient Anglo-Saxon chroniclers differed widely amongst themselves.

[a] We ascertain this fact from the Charter by which "Cynewulphus Geuissorum Rex, A.D. 766," grants the holdings of twelve Bondes or "Manentes" to the Church of Wells; of which an extract is given in Part II., *Proofs and Illustrations*, p. 341.

[b] Sax. Chron., ad an. 813. The conquest of Cornwall is particularly asserted by Malmesbury.

advantage in the dubious conflict[a]; the British Princes, though still the vassals of the Bretwalda, retaining their ancient territories. All these details of indecisive and repeated struggles attest the important fact, which would otherwise be concealed, of the strength and compactness of the British population. Had they not been nearly equal to the English, such a stubborn resistance could never have been maintained.

835. Danes, land in "West Wales"; are joined by the Britons; defeated by Egbert.

Emboldened, if not by success, yet by the absence of any decisive reverse, the Britons found allies in the Northmen. A mighty fleet sailed to the west, and the Cymri and the Danes united their forces against Egbert. But the union of civil and military talent which distinguished the Bretwalda, did not forsake him in this emergency; and the last years of his reign and life were attended by the same good fortune which had crowned his earliest career. The "hard battles" with the "Wealas" disappear from the chronicles of the Saxon Kings. The pause, thus ensuing, is the surest evidence of the supremacy which Egbert obtained. This subjugation, however, which may have been effected by the expulsion or slaughter of the principal Chieftains, did not greatly affect the common people. Even in those districts, constituting the Shires held by the Ealdormen, the feudatories of the Kings of Wessex, the progress of conquest had been so slow, that the shires had scarcely lost their character of March-lands and Border countries. Dorset and Somerset, and Wilts and Devon, were all considered as the "Wealhcynn,"[b] a designation which emphatically shews, that though the Thanes of Wessex may have enjoyed a principal share of authority, the Britons peopled the soil. Aggregated to the Anglo-Saxon political commonwealth, these territories continued to be British in kindred and in language. Even the opulent city of Exeter, which had been the capital of

900. Britons of the West wholly subdued, but continue to form the great mass of the population of the Shires of Dorset, Somerset, Wilts and Devon, which were therefore known by the collective name of the "Wealhcynn," i.e. the *Welsh kind*, or *Wallishry*.

Caer Isk, or Exeter,

[a] Coaptatum est bellum adversus Britannos in provincia Defna, Ethelwerd, lib. iii. c. 2. [War was waged against the Britons in the province of Devon.] Florence, following the Saxon Chronicle, also speaks of a battle with the Devonians: Britones in loco qui dicitur Gafulford a Domnaniensibus cæsi sunt. [The Britons were slain by the Devonians in the place which is called Galford.] Huntingdon agrees with him: Eodem anno maximum prælium fuerat inter Britones et gentem Devenescire, apud Gavelford, ubi multa millia utrinque corruerunt [In the same year there was a very great fight between the Britons and the people of Devonshire at Galford, where many thousands were slain on both sides.]

[b] Will of King Alfred, p. 16.

Part I. Ch. XII.

Damnonia before the Roman conquest, was still inhabited by the Britons, though conjointly with an Anglo-Saxon Colony[a]. Athelstane sought more. Leading all his forces against the Britons, he expelled them from their portions of Caer Isk; the domain of Wessex extended completely to the Tamar, and left the promontory of Kernau alone, in the possession of the Britons of the West. Here they continued to reside as a community; and, as is familiarly known, retaining their national Celtic language almost until our own days.

inhabited jointly by the Britons and Saxons until the days of Athelstane; he expels the former, 926.

Kernau, or Cornwall; its aristocracy at the time of the Conquest, English, the people, British.

Their line of Princes cannot be traced beyond the reign of Athelstane[b]; and their aristocracy either became extinct, or perhaps had assimilated themselves to the Anglo-Saxon Thanes. Amongst the numerous Lords of Townships recorded in Domesday, there are scarcely any whose proper names are British; and at the same time it is certain, that the English speech was still unknown to the main body of the people. But the last vestige of the political power of the Britons had been effaced. The English law had become common to all. A uniform scheme of government prevailed. The Ealdormen of the Shires included in the realm of Wessex met as peers and compeers in one paramount Senate or Assembly; and the union of these provinces, beneath one common Monarch, was so far advanced, that in the century anterior to the Conquest, we may view the whole country of Wessex as constituting one Kingdom, and as the paramount state in the Empire of Britain.

[a] Malmesbury is not entirely in unison with himself. In one passage he says, that the Britons and Saxons already inhabited Exeter "æquo jure" (de Gestis Regum, lib. ii. 6); but in another place (de Gestis Pontificum, lib. de Episcopis Cridiensibus, &c.) it is described as being then reduced into the *power* of the English by Athelstane. Hanc urbem *primus* Rex Ethelstanus in *potestatem* Anglorum, effugatis Brittonibus, redactam, munivit. [King Athelstan was the *first* to fortify this town brought into the *power* of the English, after the Britons had been expelled.] Is it to be supposed (and the supposition has great probability) that the Anglo-Saxon colonists did not originally consider themselves as subjects of the King of Wessex, but that Exeter constituted a kind of free city, though rendering "gafol" to the king, and acknowledging his supreme authority? Marseilles continued in a similar state of dependent freedom until the reign of Louis XIII.

[b] The last of these princes seems to have been Howel, who became the vassal of Athelstane. For their succession, as far as it can be made out, see Part II., *Proofs and Illustrations*, pp. 443–447.

CHAPTER XIII.

Continuation of the history of the extinction of the British power—East Anglia and Essex—great obscurity of their History—London—Albania, or Britain beyond the Humber—Teyrnedd-y-Gwgledd, the British Kings or Lords of the North—many of them descended from Maximus the Tyrant—Nations inhabiting between the Humber and the Forth, much mingled with the Roman Colonists—Picts, or Britons, who had not become Romanized—difficulties attending their History—the Scots—useless Controversies concerning them—Dalriads—early intermixture of the Picts and Scots, the two Nations appearing in conjunction from the earliest period of their history—Britons, Picts and Scots, all subjected, at various periods, to the Anglo-Saxons, or English—insulated Settlements of the Angles on the Northern Coasts—Bernicia and Deira—progress of the Angles in these Counties—Ida, first English King of Bernicia—Ella, first English King of Deira—Edwin becomes Bretwalda—subdues the Britons, Scots and Picts—rise of the Kingdom of Mercia—Britons and Mercians, under Ceadwalla and Penda, unite against Edwin—Conquest of York by Ceadwalla—he is defeated, and slain by Oswald.

THE extinction of the British power in the southern districts of the island was effected by slow degrees, and we are enabled to mark the principal stages of the progress. Not, indeed, with perfect accuracy, but yet with sufficient distinctness to afford some idea of the relative position of the conquering and conquered races, in the most important periods of our history. On the contrary, we are in utter and total ignorance concerning the eastern shores: the British bards are as dumb as the Anglo-Saxon chroniclers. No conquests in the ancient territories of the Iceni are claimed by the victors, no defeats lamented by the vanquished. Both parties, both nations, are equally silent. If, as is very probable, this part of the "Litus Saxonicum" had begun to receive a permanent Saxon colonization during the existence of the Roman empire, we may suppose, that these

Obscurity of the history of the Britons of the Eastern parts of the island. Litus Saxonicum (See above, pp. 318, 319), afterwards Essex and East Anglia, perhaps colonized by the Saxons before the arrival of Hengist and Horsa.

Part I. Ch. XIII.

settlements spread the way for additional colonies, who occupied the country without further struggle or conflict; for it is very remarkable, that the Britons have not even preserved a tradition respecting this country.

The Saxon history of East Anglia has also been almost wholly lost. The romances and romantic lays[a] commemorating the achievements of its early monarchs, Atla, King of the North-folk, and founder of Attleburgh, and Roud, King of Theodford, or Thetford, cannot supply the place of annals; and we only possess a vague and uncertain indication of the existence of Offa, or Uffa, called the first King of the East Angles[b], and from whom the dynasty which he founded acquired the name of Uffingas. Two great tribes, denominated the North and South Folk, divided the country between them, nearly in equal shares. Art and cultivation have contributed to diminish, and, in some places, to obliterate the dreary marshes which formed the boundary, and constituted the defence of East Anglia. A great retrocession of the waters has taken place within the time of historical memory. The tokens of the change are visible and distinct. Venta Icenorum[1], whose walls were anciently washed by the waters of the Wensum, now stands in the midst of a fertile pasturage. The same causes which filled up the bay of the Yare have probably equally contributed to shallow the sluggish streams of the Nen and the Ouse. And, in the present state of the country, the traveller can scarcely recognize the features which, in the ninth century, gave East Anglia the appearance of being separated from the rest of Britain, save only on that frontier, where it was

Uffa, the first King of East Anglia, from whom the monarchs of that country acquired the patronymic of Uffingas. (See II., p. 538.)

East Anglia colonized by two great tribes, the North Folk and the South Folk.

Ancient aspect of the country; divided from the rest of Britain by marsh-lands, rivers, and the Devil's dyke. (See II., pp. 553–555.)

Venta Icenorum, now Caister, near Norwich.

[a] I allude to the Romances, unquestionably of remote Anglo-Saxon origin, translated into prose by John Bramis, the monk of Thetford, and also by an Anglo-Norman Trouveur, who has expanded them into a very spirited poem, containing upwards of 12,000 verses: both these most singular works should be published, and I venture to entertain the hope, that Mr Madden, whose edition of Havelok entitles him to take the highest rank amongst the editors of ancient Anglo-Norman poetry, may be called upon to perform this task.

[b] Bede, lib. ii. c. 15. Hen. Hunt., pp. 1, 81. Higden, p. 224.

According to the genealogies appended to Nennius (p. 116), the first King of the East Angles was *Guercha*: a distortion of the name of Uffa, or Wuffa, arising, in the first instance, from the pronunciation of the British writer, and, in the next place, from the error of the transcriber.

defended by the mighty rampart[1], ascribed by tradition to the giant or to the fiend[a].

In tracing the decline of the British power, it would afford a land-mark, if we could ascertain when London, which always preponderated above the other cities of the island, was lost to the Britons[2]. We only know that it was not conquered by Hengist, or ever incorporated in the kingdom of Kent. It was afterwards locally included in the kingdom which, stretching onwards from the west, became the dominion of the "East Saxons"; and the monarchs of Kent and of Essex exercised certain powers of sovereignty in the city: but, strictly speaking, we have no proof that London ever formed part of the early Anglo-Saxon kingdoms. With respect to the other important cities included in Essex, Verulamium, the earliest seat of Christianity in Britain, Camulodunum[3] near Colchester, history is equally silent as to the time of their acquisition by the East Saxons; and the fragments of the chronicles which assert, that Ercenwine, the son of another Uffa, or Offa, was the first King of Essex, afford but an uncertain indication of the period when the Saxon power effected this conquest. Uffa was descended from Saxnot, a deity whom the Old Saxons worshipped with peculiar honour; but the state never acquired any strength, and, at every period of its history, Essex appears subjected to the supremacy of some Bretwalda or foreign King.

Kingdom of Essex. London, the era of its conquest by the Anglo-Saxons entirely unknown. No evidence that it was ever incorporated in any of the ancient Anglo-Saxon kingdoms. It probably continued, like Exeter, as a kind of dependent state, beneath the supremacy of the kings in whose dominions it was included.

527. Ercenwine, the son of Uffa or Offa, supposed to be the first King of the East Saxons. (See II., p. 555.) (See above, p. 8.)

Both in Essex and in East Anglia, the Teutonic population became dense and numerous. The Saxons and Angles rested, as it were, upon the kingdom of Kent, and, possessed of the shore, they could constantly receive fresh reinforcements from their allies beyond the sea. Lloegria was rapidly yielding to the "Dragons of Germany," and the Britons were now so much surrounded by the Saxon colonies, that even if they had been inclined to unity and friendship amongst themselves, it would have been scarcely possible for them to adopt any scheme of government, or any plan of defence, which could have availed them against their enemies.

In Albania, or Britain north of the Humber, their subjugation, though not entirely averted, was long retarded and delayed. Valentia, which had been so thickly settled with military colonies, appears, after the extinction of the Roman dominion, to have been ruled by many princes, collectively designated as the

[a] Will. Malm., de Gestis Regum, lib. ii. c. 13.

Part I. Ch. XIII.

British sovereigns of the North, or Teyrnedd-y-Gwgledd, many of whom traced their descent from Maximus, or "Maxim Wledig." (See above, p. 318.)

Teyrnedd-y-Gwgledd, the Lords, or, if we choose to adopt the Pelasgic term, which has equally passed into all the Celtic dialects, the "Tyrants of the North."[a] Teyrn is employed, according to its real and genuine application, to designate any possessor of sovereign authority. The Britons considered the word also as indicating an hereditary dignity; and the Kings of those districts who were most feared or respected for their power, traced their lineage, as has been before observed, to Maximus, or "Maxim Wledig,"[b] the Emperor of Roman Britain. A considerable degree of doubt, if not of discredit, is sometimes supposed to attach to these pretensions. And a Welsh pedigree does not command much respect in the opinion of the "Sassenach" reader. From the frequent recurrence of the same names in the same families, and the total absence of any well authenticated dates, in the earlier periods, it must be admitted, that these British genealogies are confused, and sometimes contradictory. They are also imperfect; the links of the pedigree are not infrequently deficient, and, occasionally, supplied by conjecture. But such are the records of all ancient lineages; and admitting that the British pedigrees must be employed with caution, they may yet be received as historical testimony. Had mere vanity taught the Cumbrians to bestow a Roman origin upon their monarchs, they would surely have chosen a greater progenitor than the comparatively obscure, and more than obscure, the deposed, Tyrant of the West. If the difficulties attending the elucidation of the ancestry of an old family were conclusive evidence against the alleged descent, many of our noble houses must be deprived of all their heraldic honours. But the candid inquirer will allow for error, and still more for the attempts injudiciously made to confirm a genuine tradition by fictitious documentary evidence.

[a] Tiarna or Tighearna (Irish), and Teyrn (Welsh). In Armorica we find the titles of "Tyrannus" and of "Mactiern" assumed by the Breton chieftains. (Lobineau, vol. i. p. 68.) The latter were the inferior chiefs of the tribes, and in Welsh, *Mechdeyrn* properly signifies a tributary prince. In the very ancient and original oath taken by the Dukes of Britanny, the Mactierns are named after the Comites. The name of Kentigern is explained in his life to signify Cean-teyrn, or chief lord. For the Teyrnedd-y-Gwgledd, see Æræ Cambro-brittanicæ.

[b] *Gwledig* is not strictly equivalent to Emperor, but is employed to denote supreme power. (Owen Pughe.)

In proceedings before Courts of Justice, when the claim depends upon the deduction of pedigree, a well founded suit has often been ruined by the dishonesty of the plaintiff. A foolish man attempts to help the truth by falsities, which, when discovered, taint the whole of his cause, whilst, if the facts had been presented upon their real ground, they would be admitted without controversy.

Six principal British tribes inhabiting between the Humber and the Forth.

Before the primeval British population had been disturbed, the northern parts of Britain were peopled by six Tribes, or Nations. The Brigantes dwelt between the Humber and the Tyne; and the country from thence to the Forth belonged to the Otadeni, the Gadeni, the Selgovæ, the Novantæ, and Damnonii.

After the erection of the Roman walls, the tribes included between these boundaries supposed to have acquired the name of the "Mæatæ."

After the erection of the Roman walls, it has been supposed, that the tribes stationed between these barriers acquired the new name of "Mæatæ," a general term, employed, like many others of the same class, concurrently with the particular or special denominations of the nations which it included[a]. All these tribes had been much mingled with the Roman colonists; and those who dwelt in the Burgi, and other fortified settlements, connected by the Roman walls, as well as the inhabitants of the districts possessed by Roman landlords, had, without doubt, adopted many of the usages of their masters. Yet, notwithstanding this subjection, the Britons, both here and in other districts of the island, retained their own laws and customs beneath the Roman supremacy.

The double principle of government in the states of the Middle Ages: the *units*, or communities, retaining more or less of their barbarian policy, and the general government of the whole state inclining towards the Roman policy.

When the heavy hand of power was removed, the Britons easily reconstituted themselves into British states and kingdoms, retaining somewhat of the Roman policy in their political or general government. In studying the history of the Middle Ages, we must always be prepared to recognize the twofold elements of government and power—the court of the Sovereign embued with doctrines derived originally from Rome or Byzantium—and the Barbaric jurisdictions of the people. Often striving against each other, sometimes concurring to the same ends, this dualism subsisted as a constant and secret source of action, until a new, and not inharmonious, form of policy was created by conflict and by compromise.

The Romanized Britons were exposed, almost incessantly, to

[a] But it is a name which rarely occurs, and is brought forward much more prominently by modern historians than by ancient writers. The "Mæatæ" are first noticed in Dio., lib. 76, and never mentioned by any ancient writer after the truce concluded with them by Caracalla.

Part I. Ch. XIII.

the hostility of the Picts. Originally, the main body of this nation dwelt entirely out of the boundaries of the Roman provinces; but towards the decline of the empire, some detachments passed the frontier, and settled themselves in the modern Lothian and the modern Galloway. Whence the denomination of Pict arose is of little consequence, and I shall not present the reader with any part of the formidable array of etymologies, ransacked from Gothic and Celtic roots, which have been seized upon as weapons by the belligerent parties in the "Pictish Question."[1] It is sufficient to observe, that we may agree with those who ascribe the origin of the name to the Romans, and who seek its derivation in the pigments with which the Britons anciently dyed their bodies, for the purpose of rendering themselves more formidable to their enemies. The interest excited by the history of the Picts is much increased by their mysterious disappearance, and even by their strange and uncouth names; Drust, Talorg, Nectan, Morbet are beings who seem to have no affinity to any people inhabiting beneath the moon[a]. In the ninth century, their monarchy is absorbed, as it were, amongst the Gael. Many tribes or clans, however, were still considered as Picts. Obeying the Scoto-Saxon King, they invaded the South; and, in the great battles of Clitheroe and of the Standard, they swelled the barbarous host opposed to the army of Stephen[b], but in the next age they

The Picts, probably Britons, who, having been subjected by the Romans, became so much estranged from the Romanized Britons as to appear a distinct nation.

Picts said to have fought in the Scottish Host in the battles of Clitheroe and of the Standard. 1138.

[a] Chalmers, however, has shewn, with great success, that they may be generally traced to British roots. It may be added, that they seem to betray an affinity to the Armorican, or, in fact, that they agree with the more ancient dialect. "Bili," a Pictish name, often occurs in the Armorican or Breton charters (Lobineau and Morice, Preuves). Wrad (Pictish) and Frad Leoc (Armorican) seem to be in connexion.

[b] They are mentioned repeatedly in the narratives of these transactions, by the two Priors of Hexham, and by Ailred, Abbot of Rievaulx, contemporaries, and living in the country which had been the seat of war. Under these circumstances, it is scarcely possible that they could have erred in giving the name of Picts to the clans, who were then yet known as a distinct race, though dwelling amongst the Scots of Galloway. (Picti, qui vulgò Galweienses dicuntur.) [The Picts, who are commonly called the men of Galloway.] From the manner in which they are noticed by John of Hexham, they seem to have formed as prominent a part of the army as the Scots themselves. Hoc bellum factum est inter Anglos, Pictos *et* Scotos, apud Clitherou &c....Scotti itaque *et* Picti vix a prima hora initi conflictûs usque ad tertiam perstiterunt, &c., Johannes Hagustaldensis, p. 261. [This

were swept away. Blotted out from the face of the world, their singular fate pointed the moral of the chronicler, reminding him of the instability of human affairs, and the vanity of human glory[a].

After which they suddenly disappear.

In the country wherein they dwelt, their deserted strengths and habitations seem as ghostly and paradoxical as their history. No traditions connect them with any existing race. They stand aloof and apart from the rest of mankind. Nought has survived, except the tales of their ferocity, and the legends which indicate the "giant's grave" as the resting-place of the Pictish warrior. After weighing and comparing the arguments which have been adduced by the disputants who have mooted this inquiry, there can, however, be little hesitation in adopting the opinion, that the Picts were not originally distinct from the other British inhabitants of this island[b]; but whilst the tribes to the south of the Forth became Romanized, the Picts, whatever may have been their ancient name, Caledonians or Vecturiones, retained

battle was fought at Clitheroe between the English and the Picts *and* Scots....So the Scots *and* Picts, with difficulty maintained their resistance from the first hour of the beginning of the conflict to the third]. And so he continues throughout his narrative.

[a] These are the remarks of Huntingdon. Quamvis Picti jam videantur deleti, et lingua eorum ita omnino destructa, ut jam fabula videatur quod in veterum scriptis eorum mentio invenitur. Cui autem non comparet amorem celestium et horrorem terrestium, si cogitet non solum reges eorum et principes et populum deperiisse, verum etiam stirpem omnem et linguam et mentionem simul defecisse? Et si de aliis mirum non esset, de lingua tamen, quam unam inter cæteras Deus ab exordio linguarum instituit, mirandum videtur, lib. i. [Yet the Picts at the present day appear to be extinct and their language so utterly destroyed that the mention of them found in the writings of the ancients seems to us a fable. In whom does it not induce a desire for the eternal and a dislike of the temporal, when he reflects that not only their kings and princes and their people have perished but that their very race, their language and their memory have disappeared with them? And even if it were not wonderful in the case of the other things, yet it seems a matter for wonder as regards their language, which, one among others, God appointed when diversity of tongues first arose.]

[b] There are certainly some perplexing appearances against this hypothesis, which will always afford arguments to those who maintain that the Picts were a *Scythian* or Teutonic tribe. Bede's authority will be appealed to by those who maintain the latter opinion.

Part I. Ch. XIII.

their primitive rudeness. The one nation adopted new customs and new laws; the others, perhaps, degenerated and retrograded in civilization, until, like the Ceylonese and the Cingalese, each received a new stamp, and the peaceful citizens and the laborious cultivators became wholly estranged from their savage kinsmen.

Picts and Romanized Britons to be compared to the Ceylonese and Cingalese.

Often incited by the desire of plunder—for the two communities of Picts and Romanized Britons stood nearly in the same relative situation of wealth and poverty as their local successors, the Highlanders and Lowlanders of modern Scotland—the Picts were also stimulated by that antipathy which invariably exists between the more savage and the more civilized branches of the same nation. Tamed animals are always persecuted by the wild deer of their own species; and the warlike and energetic barbarian hates his brother with the greater intensity, on account of his consanguinity. Other feelings, probably, also contributed, in some degree, to increase this ferocity of the Picts; for, as we may judge from the history of St. Patrick[1] and of Gildas, the higher classes of the Romanized Britons, in the cities and colonies, had generally embraced Christianity.

We must now advert to another people, who, like the Anglo-Saxons, were also destined to become the Lords of the Britons, and the founders of a new and enduring sovereignty. In the earliest historical monuments which we possess, the Picts are mentioned in conjunction with the "Scots," who, having their chief seat in the peninsula of Cantyre and in Argyle, seem also to have been scattered on many other parts of the north-western coasts of the island. With respect to the stock and stem of this nation there is no perplexity. There is not the slightest difficulty in pronouncing, that they were no other than the Gael of the present age, being the same race as the inhabitants of "Scotia," now called Ireland[a]. It is the unlucky characteristic of Scottish history, that every era has its own literary war; and Mary's frail beauty has scarcely provoked more ardour and severity, than the most abstruse points of the most arid archæology. An angry and very fruitless controversy has been carried on concerning the

The Scots, first mentioned in conjunction with the Picts.

Scots settled in Erin, or Hibernia, the same race as the Gael of the present day.

[a] The authorities which shew that "Scotia" was an island distinct from Britain, and the same as "Hibernia," or "Erin," have been collected by Camden (Epist. p. 369), and afford the fullest proof of his proposition. When settled in Britain, the Gael took the name of "*Albanaich*," from the British appellation of the northern part of the island.

era of the arrival of the Scots in North Britain; as if it were possible to ascertain whether the eastern or western shore of a strait, which the simplest bark can traverse in the course of a winter's day, first received its destined inhabitants, at that period when the decree of Providence dispersed the children of Japhet in the islands of the Gentiles. In "Scotia," however, they were much more numerous than in North Britain, or "Scotia Nova,"[a] as their settlements were sometimes termed; a country in which the body of the population consisted of other tribes, amongst whom they were implanted, and with whom they were so much mixed, as also to acquire the name of "Brittano-Hiberni."[a] Erin, therefore, became the supporting point of the British Gael, and from whence further reinforcements were not infrequently received. Such a migration appears to have been effected under the command of Reuda, in the manner told by Bede; and the Dalriads joining with the Picts, or, perhaps, meeting them in Roman Britain, seem to have assisted in perpetrating the ravages which, though partially repelled by Theodosius, continued until the establishment of the Angli in the central parts of Britain, an event that opposed an effectual barrier to these invasions. The Scots are even said to have been chased back again to Ireland. The fact seems to have been, that there was a flux and reflux of this barbarian population, who, however, continued to gain ground on the waste and infertile shore[b].

Reuda, celebrated as the leader of a powerful clan of Scots, probably those who joined with the Picts in the invasion of Roman Britain. (See above, p. 319 and below, p. 352, note b).

In the early part of the sixth century, the Scoti, who hitherto seem to have consisted of clans, not owing obedience to any common chieftain, became subjected to the authority of the far-famed sons of Erc[1], the descendants of that same Reuda from whom a portion of their nation had derived its name. Loarn and Fergus have been considered, by the harmless vanity of their descendants, as the leaders of a new and warlike colony; but a trusty band of warriors would suffice to confirm the authority of the chieftain, if the people were already inclined to render obedience, and we may concede the sovereignty of the champion or warrior, the Lord, or Teyrn, of Argyle, without admitting his patriarchal honour.

A.D. 503–506. Loarn and Fergus, the sons of Erc, chieftains of the Scots of Argyle, from the latter of whom descended the Scoto-Pictish kings.

[a] Vita S. Cadröe, Acta Sanct. Martii i. p. 477. Vita S. Donani, Acta Sanct. Aprilis ii. p. 487.

[b] The authorities for the settlements of the "Scots" are brought together by Innes, Chalmers and Pinkerton, and I have used their collections, without always adopting their opinions and theories.

Part I. Ch. XIII.

In speaking of the Scots as a distinct people, it must, however, be recollected, that they did not constitute a nation inhabiting a territory accurately divided by metes and bounds from the Pictish or British inhabitants of the same regions. Cantyre and Argyle[a], and some of the islets, may have been exclusively peopled by them, and many a mountain strath became the sole haunt and dwelling-place of a clan of the Gael. But they were scattered amongst the Roman Britons, and also amongst the Picts, and, in some cases, had evidently intermingled with them. Of these early intermixtures, the legendary compact related by Bede affords sufficient proof, though, as is often the case, a fictitious cause is assigned, in order to explain an existing fact[b]; for

Early intermixture of the Scots and Picts.

Traditions concerning the early history of the Picts and Scots, as preserved by Bede (lib. i. c. 1.)

[a] According to Innes (p. 647), upon the authority of Kennedy, Niel, King of Scotland, obliged the Picts to evacuate these provinces as early as the year 386 A.D.

[b] Sailing from Scythia, the Picts first touched upon the northern shores of Ireland, where they requested the Scots to grant them a settlement and habitation. The Scots replied, that the island would not contain two nations; and they advised the strangers to proceed to the neighbouring land, towards the rising sun. The Picts adopted this counsel, and, passing over to Britain, they occupied the northern parts, the southern being peopled by the Britons. Cumque uxores Picti non habentes peterunt a Scotis, ea solum conditione dare consenserunt, ut ubi res perveniret in dubium, magis de feminea regum prosapia, quam de masculina regem sibi eligerent; quod usque hodie apud Pictos constat esse servatum. [And when the Picts, who had no wives, sought them from the Scots, the latter agreed to give them only on condition that whenever there was doubt on the matter, they would elect their king from the female royal race in preference to the male, a custom which it is well known is observed among the Picts to this day.] In the course of time, Bede continues, a colony from Ireland passed over to the country of the Picts. These were the Dalreudini. Procedente autem tempore, Brittania post Britones et Pictos tertiam Scottorum nationem in Pictorum parte recepit; qui duce *Reuda* de Hibernia progressi, vel amicitia, vel ferro sibimet inter eos sedes, quas hactenus habent, vindicarunt; a quo videlicet duce usque hodie Dalreudini vocantur, nam lingua eorum *daal* partem significat. [But in course of time, Britain, after the Britons and Picts, received a third nation, that of the Scots, in the part of the country inhabited by the Picts, who came from Ireland, under the leadership of Reuda, and obtained for themselves settlements among the Picts, either by friendly arrangement or by the sword, which settlements they have to

the story could not have gained ground, had not the tribes been visibly united and conjoined. They were strewed and interspersed amongst each other, perhaps not infrequently subjected to the rule of one predominant monarch. But here, again, we must attend to the involutions of authority. A government founded upon race or caste, has within it a principle of vitality by which it is kept in vigour, notwithstanding the whole nation may pass beneath another dominion; and if a Scottish king obtained the sovereignty of a Pictish tribe, his authority was entirely compatible with the continued existence of the subordinate power of the mediatized chieftain. Eclipsed by the superior fame of his lord, he may disappear, for a time, from the annals of history, though still retaining the authority which had devolved to him from his ancestors. These circumstances, applicable to all the clan governments of Britain, are very intelligible when once pointed out, and can be surmised and admitted without any difficulty; and they will enable us to reconcile many discordant narratives, to bestow credit upon the perplexed and obscure annals of a barbarous age, and to point out their contradictions, without always impugning the veracity of the relaters. Affected by prejudice, and coloured by passion, the involuntary errors of a contemporary chronicler have often received a further distortion by the ignorance of a subsequent compiler. Yet history, abounding as it does in palpable errors, exhibits, comparatively, but a small proportion of wilful misrepresentations or intentional falsehoods.

Probability, that many tribes of the Picts were occasionally subjected to the Scots.

Partial subjection of the chieftains, quite compatible with the continued existence of the clan governments.

All the nations before mentioned, Britons, Picts and Scots, became, at various intervals, subjected to the supremacy of the Anglo-Saxons; and the accidental preservation of a few details relating to their history will enable us to obtain an intelligible, though not a perfect view of the policy of the ancient English empire. Our constitution, as I have more than once observed, is the result of the union and amalgamation of divers communities, which have grown together. The dominions of one monarch, though governed by him with different rights, they ultimately became parts of one commonwealth, subjected to one legislature, and obeying one law.

Britons, Picts and Scots all subjected, at various intervals, to the English or Anglo-Saxon empire. (See II., pp. 331–428 and 614–629.)

this day: and from their leader they are still called Dalreadings, for in their language *daal* signifies part.] In Irish the word "*Dail*" retains that signification, but the term, or rather the root of it, is common to the Teutonic or Gothic, as well as the Celtic dialects.

Part I. Ch. XIII.

Whilst the south of Britain was the constant scene of the conflicts, and occasionally of the triumphs, of the Saxons, the north, since the days of Carausius, had been equally exposed to their predatory invasions; but these inroads continued until the beginning of the sixth century, before they led to the establishment of any state, which, in the usual language of historians, could be considered as a kingdom. Octa and Ebusa, the uncle and cousin of Eric, King of Kent, are said to have directed their attacks beyond the Humber, and even to have ravaged the Orcades, where their Saxon kinsmen had been defeated by the generalship of Stilicho; but they succeeded rather by compromise than by force, and their establishment was due rather to their policy than their power. The little that is told concerning these early transactions is corroborated by the general aspect of Northumbrian history. If we must discard the minute accounts of the signal defeats sustained by the sons of Hengist at York, during their balanced conflicts[a] with Uther Pendragon, the slowness of the progress of the invaders proves that they could not have landed in great numbers, and that they encountered a strenuous and not unsuccessful opposition from the Britons. Retaining the numerous "Burgi" which defended the Northern Marches, the Britons kept possession of the most defensible points, whilst the

North Britain much harassed by the Saxons from the time of Carausius.

Octa and Ebusa said to have settled beyond the Humber, about the time of the conquest of Kent.

(See above, p. 319.)

But the Saxons are resolutely opposed by the Britons, and only form isolated settlements.

[a] The Saxon chronicles, as they now exist, do not contain any notices of Northumbria, anterior to the accession of Ida. Malm., de Gestis Regum, lib. i. c. 3, has derived his information from sources which are now lost. Sæpe numero cum provincialibus congressi, profligatisque qui resistendum putaverant, reliquos in fidem acceptos placidæ quietis gratia mulcebant. Ita cum et suis artibus et subjectorum favore nonnihil potestatis corrasissent, nunquam tamen regium nomen temerare meditati, ejusdem mediocritatis formam in proximos posteros declinaverunt. Annis enim uno minus centum, Northanhimbri Duces communi habitu contenti, sub imperio Cantuaritarum privatos agebant. [Having often come into conflict with the men of that province, and put to flight those who thought fit to resist, they received the others in subjection and conciliated them by the boon of an unbroken peace. So, when by their address and the goodwill of their subjects they had attained no little power, yet they never thought of infringing the royal title, and passed on the example of a similar moderation to their nearest descendants. For, for a hundred years less one, the Northumbrian Dukes were content with their ordinary condition, and acted as subjects under the rule of Kent.]

Galf. Mon., lib. ix. Florilegus, ad an. 498.

intermediate country yielded to the strangers. The descendants of Hengist, may, as we are told by Malmesbury, have acknowledged the primacy of the Kentish kingdom, the younger branches yielding to the patriarchal precedency of the elder stem of the family. But there can be no reason to extend the same subjection to the other Anglian "Ealdormen" whose achievements are faintly discerned in the fables of the delusive sagas of Scandinavia, and who had settled upon the shores, adjoining to the bays, which sheltered their piratical navy. Carrying on war merely as adventurers, seeking only their individual advancement, these invaders inflicted much evil upon the Britons, without gaining any commensurate political power; nor did they avail themselves of the strength arising from concert and union. The Britons, on the contrary, had formed themselves into a monarchy, consisting of the princes dependent upon one sovereign, whose authority, as in the south, seems to have been an imitation of the Roman Imperial authority; and so long as the Angles continued destitute of any political chieftain no extensive conquests could be effected by their swords. Other hosts, however, continually arrived from the shores of Germany, headed by new Heretochs or generals[a]; and, at length, the settlements were united under a king, whose power turned the tide of victory.

Invasions of the Angles, obscurely noticed in the Scandinavian sagas.

In all countries subjected to a foreign government, there is a double geographical nomenclature. The political divisions and foreign names imposed by a conqueror neither obliterate the popular denominations, nor supersede these collective distinctions, which, however repudiated by official language, continue current and familiar amongst the inhabitants. The Britons, therefore, considered that Albania, the realm of Albanach, the son of Brute, or Britain north of the Humber, was composed of two great regions, Berneich and Deur, which retained their original appellations, even until the extinction of the Anglo-Saxon empire. Berneich or Bernicia[b], extending from the Tyne

Double geographical nomenclature in countries subject to a foreign political supremacy. Englishmen speaking of Hindostan, divide the country according to Presidencies, the Hindoos retain the ancient enchorial names.

The eastern coasts between the Humber and the Forth, divided into two great territories: Berneich, or Bernicia, extending from the Tyne to the Forth, including

[a] Nennius, c. 64.

[b] I follow the ordinary orthography, but Fordun reads *Berwiccia*, a name which I am almost tempted to suppose, is preserved in Berwick, or Berwickshire, the central district of ancient Bernicia. The misreadings arising from the similarity of the *n* and the *u* in ancient MSS. are of very frequent and very ancient occurrence, if an ancient transcriber did not happen to know the real sound of the name. The British names of Bernicia and Deira are given by Nennius, or his continuator. The extent of these districts to the west, or inland, is not

Part I. Ch. XIII.

to the Frith of Forth, contained, like the other parts of Britain, many states, which, about this period, acknowledged Urien as their Pendragon, or supreme ruler. Gododin, probably the modern Lothian, a province in which the Romanized Otadeni were partly intermingled with their less civilized kindred, the Picts, was lost, after a very obstinate conflict, in the great battle of Catterath. Other hard and stubborn conflicts took place, in which Urien bravely defended his country against Ida, "Flamddwynn," the "Flame Bearer,"[1] who landed from Germany, at the promontory, which is still denominated from the epithet bestowed by the Britons upon the English invader[a]. Ida, however, the father of twelve valiant sons, maintained his supremacy. The lofty tower which Ida erected, became his palace and his fortress; the Britons confessed and mourned the disgrace inflicted upon them: and the successful warrior[b] established himself as King among the English Chieftains, who ruled from the Tyne to the Scottish Sea, but whose states were intersected by tracts governed by the British chieftains.

many states, such as Gododin, afterwards Lothian, &c., and in which Ida establishes himself about 547. Ida is considered as the first King of the Northumbrian Angles. (See II., p. 563.)

In Deur, or Deira, the province between the Tyne, or perhaps the Tees, and the Humber, the progress of the English was slower than in the north. York, it is true, had been attacked and plundered before the establishment of Ida. But the flight of Archbishop Samson to Armorica, where he founded the see of

Deur, or Deira, from the Tyne to the Humber.

500. York taken about this time. Archbishop Samson takes refuge in Armorica, where he founds the see of Dol.

very distinctly marked. The southern boundary is most probably found in the limits of the province of York; the northern frontier is to be ascertained by the repeated notices of the Forth, as the boundary between the English and the Picts.

[a] Ida venit cum quadraginta navibus ad Flamburgh, juxta Scarburgh, Flores Hist.; Wallingford. [Ida came with forty ships to Flamborough, near Scarborough.] Such compilations, though not of very early date, often preserve important local traditions, and popular anecdotes of history. Knighton belongs to this class. The fullest account of the family of Ida is found in the Genealogies appended to Nennius. These, which are extant only in one recension, are certainly written by a Briton, and probably by a Cumbrian Briton. The value of this relic is not to be estimated by its bulk. Short as it is, it affords the most important confirmation of the general truth of the British histories and traditions. Bede has no mention of Ida.

[b] Ida struxit Dynguayth Guarth Berneich, Nennius, Gen. p. 116. [Ida built Dynguayrdi Guurth Berneich.] Gwair, *the disgrace of Bernicia*, was afterwards given by Ida to his queen, Bebba, from whom it derived its present name of Bamborough.

Dol[a1], may have been occasioned by a predatory incursion. The prevalence of the Druidic belief amongst the Britons of the north might hasten the expulsion of the British pastor; and though the Angles obtained possession of the shore of the German Ocean, open to the reinforcements which poured in from the Cimbric Chersonesus, yet, on the whole of the western coast, the Britons continued in full strength. Cumbria, of which I shall speak more fully hereafter, was an unbroken British Commonwealth, full of strong positions, and the power of this state supported the minor British principalities, which checkered the English territory, all, or most of them, being dependencies of the Cumbrian Crown.

(See above, p. 125.)

Ella, son of Yffi or Uffi, King of Deira, obtains the supremacy of Bernicia also. 559, 560. (See II., p. 563.)

About the middle of the sixth century Ella appears to have been paramount sovereign of the Angles of Deira, and also of Bernicia; he succeeded, or rather obtained this authority upon the death of Ida: but between his family and the sovereigns of Bernicia there prevailed a fierce competition for supremacy. Hence, as in the south, the British states and tribes were often spared by the dissensions of their enemies. During the reign of Ella, the sons of Ida appear to have continued to govern the country as his vassals, and, upon his death, one of them, Æthelric, regained the superiority of which his dynasty had been deprived.

Edwin, son of Ella, expelled by Ethelfrith, son of Æthelric; takes refuge with Redwald, King of the East Angles. (Bede, and see II., p. 563.)

Edwin, the son of Ella, at various periods of his life, sustained great reverses of fortune, and his personal adventures had a more than ordinary influence on the affairs of the English nation. Ethelfrith, the son of Æthelric, King of Bernicia, declared war against Deira, and compelled Edwin, then of tender age, to take refuge with Redwald, King of the East Angles, who received him with great hospitality. Ethelfrith had married Acca, the daughter of Ella, and he now united in his person the supremacy of the two kingdoms of Bernicia and Deira, and became the most powerful, as he was the most ambitious, of the kings who had hitherto ruled in Northumbria. None of his predecessors, in either realm, had gained so much territory from the Britons, or given such extent to the English colonies. Probably the intercourse with Jutland still continued, and the country was occupied, not only by the increasing population, but by the emigrants who sailed from the opposite shore.

592–616. Ethelfrith married to Acca, the daughter of Ella, and sister of Edwin. (Bede, lib. i. c. 34, and see II., p. 564.)

Wars between the West Saxons under Ceolwulf and the Angles.

As yet, no national feeling or kindness existed amongst the English and Saxon tribes. Ceolwulf, of Wessex, fought against

[a] Usher, Primordia, p. 278. Vita Sampsonis, Bibl. Floriac., c. 5. See Part II., *Proofs and Illustrations*, p. 562.

Part I. Ch. XIII.

the "Angle Cynn" with as much pertinacity as against the Britons, the Picts, or the Scots. And there was as little amity amongst the English tribes themselves. Ethelfrith becoming apprehensive of the claims of Edwin, who had now attained man's estate, applied to Redwald to surrender the fugitive. But the Bretwalda—for Redwald, whose history is enveloped in the greatest obscurity, had attained the contested dignity—not only refused to grant the request, but raised a mighty army with the intent of compelling the Northumbrians to acknowledge his supremacy. On the banks of the River Idle, the contending armies, or rather nations, met in battle. Rægenhere, the son of Redwald, fell in the conflict, but Ethelfrith was also slain; his followers were dispersed; and Edwin became the undisputed sovereign of both the kingdoms of Northumbria[a]. Thence he expelled the sons of Ethelfrith. They were his nephews, the children of Acca, his own sister; but this relationship, perhaps, increased his enmity, from his apprehensions of their claims to the succession. And Eanfrid, together with his brethren, Oswald, Oswio, Oslac, Oswin, and Offa, fled to the Scots and the Picts, by whom they were received with the honour deserved by their rank, and the kindness due to their misfortunes; Eanfrid, in particular, became the husband of a Pictish princess, and the father of a Pictish king.

617. Battle of the Idle (Bede, lib. ii. c. 12). Ethelfrith killed. Edwin succeeds to the whole of Northumbria. Expels the Athelings, the sons of Ethelfrith, who take refuge amongst the Picts and the Scots. Eanfrid, one of them, becomes the father of Talorgan, King of the Picts. (See II., pp. 565, 568.)

617–633. Edwin, Bretwalda. All the Saxon kingdoms (except Kent) subjected to him. He rules over the Scots and Picts.

Edwin, in consequence of these successes, acquired great power. Wessex, and all the other kingdoms of Britain, Kent alone excepted, were exposed to his hostility, or acknowledged his supremacy. The Scots, the Picts and the inhabitants of the distant Orcades became his vassals; he extended his sway to the Menavian Islands. And, in his own immediate vicinity, he reduced the principality of Elmet, or Elfet, and expelled the unfortunate Certic, the British sovereign[b].

Elfet, or Elmet (in modern Yorkshire), a British principality, conquered by Edwin.

Government of Edwin. His conversion (see above, p. 125). He adopts the "Tufa," or Roman ensign of dignity.

Edwin governed the country with wisdom and firmness. Adopting the precepts of Christianity, not merely as the canon of his faith, but as the rule and foundation of his civil policy, his empire became a favoured region of peace and justice. Whether suggested by Paulinus, the Roman missionary, or

[a] The use of this name is probably an anachronism. The boundary of the kingdom of Deira seems rather to have been the Trent; and it probably acquired the name of Northumbria, after the separation of South Humbria, subsequently considered as part of Mercia.

[b] Bede. Will. Malm., lib. i. c. 3. See Part II., *Proofs*, p. 565.

imitated from the British sovereigns, the Bretwalda adorned himself with the insignia of Roman authority[a]; and if his reign had been prolonged, he might have renovated the empire of Britain. But the states of the Angles were not firmly amalgamated into one monarchy. Each Ealdorman, in his own dominions, possessed great power; and the introduction of Christianity, though recommended by the congress of Princes or Ealdormen, and Counsellors or Sages, who had assembled under his supremacy[b], was promoted or retarded by the inclinations of the several Reguli. Lindisse, containing the great Roman city of Lincoln, was governed by a chieftain named Blecca, who gladly and willingly followed the example of Edwin. The Mercians, or Middle Angles, and South Humbrians, on the contrary, refused to adopt the creed of the sovereign. Penda, their ruler, was a fierce and fanatic warrior, most zealous for his pagan faith, and either claiming, or supposed to claim, a more than human power. Penda, instigated, perhaps, as much by religious animosity, as by the desire of political independence, allied himself to Ceadwalla, King of the Western Britons, and declared war against the King of Northumbria.

Limited authority of the sovereigns of Northumbria. The Ealdormen adopt their own course in their own dominions. Blecca, ruler of Lincoln, adopts Christianity; Penda, sovereign of the Middle Angles and South Humbrians, refuses.

(See II., p. 479, and Bede, lib. ii. c. 14, 15, 20.)

(See II., p. 479.) Penda allies himself to Ceadwalla, King of the Western Britons, who join their forces against Edwin.

The origin of the kingdom of Mercia is extremely obscure. Various chieftains of the Angles occupied the land, combating with the natives—often, perhaps, with each other—and established the states which I have named. Under Crida, or Creoda, the royal authority was first established, and, as it should seem, in subordination to Northumbria. The "March," or border, was probably the collective name of these states, and at first not attributed to any of them in particular. The inhabitants were a mixed people, and little cordiality as there was between the different Anglo-Saxon nations in subsequent times, the Mercians always appear as possessing the least community of interest with their countrymen.

Mercia: great obscurity of its early history.

(See II., p. 477.)

Mercians, Middle Angles and South Humbrians, probably a mixed race.

A great battle was fought between the Northumbrians and their opponents, at Heathfield. Edwin was defeated and slain, and in the miserable year, during which Deira and Bernicia, again divided, were nominally subjected to Osric and to Eanfrid,

633. Edwin defeated and slain by the Britons and Mercians, at Heathfield.

633, 634. Osric (son of Alfric, son of Yffi), and Eanfrid, son of Ethelfrith, succeed, respectively to Deira and Bernicia.

[a] Bede, lib. ii. c. 16.

[b] With whom, in Alfred's words, he wished to have "*spræc*" and "*gethæht*," discourse and consideration, or "thought." But in this place "gethæht" is applied technically and as the term by which the assemblies of the legislature were denoted.

634, 635. Successes of Ceadwalla, who occupies York, and probably the whole of the kingdoms of Northumbria. The Britons view him as the destined restorer of their monarchy, but he is killed by Oswald, the son of Ethelfrith, at "Denisesburn."

all the calamities of the country were aggravated by the weakness or wickedness of these sovereigns. Ceadwalla continued his warfare without intermission; and such were his successes, that the Britons expected, and the hope was neither wild nor extravagant, that he was destined to restore the monarchy of Britain. York he gained after a fierce and desperate attack. Osric, with his harassed and divided forces, rashly attempted to besiege him in this fortified city; but Ceadwalla, sallying forth, defeated and slew him, and Eanfrid, venturing to approach the British King with twelve chosen soldiers, encountered the same destiny. A quick reverse of fortune, however, was at hand. Oswald, the son of Ethelfrith, the nephew of Edwin, and who represented the royal families both of Bernicia and of Deira, gathered his forces, and giving battle to the Britons at Denisesburn[1], Ceadwalla was slain, and his opponents obtained an entire and decisive victory[a].

[a] Bede, lib. ii. c. 5, 9, 10, 12, 14, 16, 17, 20; lib. iii. c. 24. Will. Malm., Sax. Chron. and Flor. Wigorn. concur as to the principal events. Huntingdon and Malmesbury, though the latter chiefly follows Bede, have some passages not found in the other chroniclers. For the British accounts of Ceadwalla's victories, see Llywarch Hên, as quoted in Mr. Turner's last edition of his most valuable history, i. 367.

CHAPTER XIV.

Continuation and conclusion of the History of the Britons of the North—Oswald gains upon the Britons—becomes Bretwalda—the four Nations of Britain, Angles, Britons, Scots, and Picts, acknowledge his supremacy—Oswio, his brother, succeeds to his authority and power—the great British Kingdom of Cumbria, or Strath Clyde—its sovereigns and extent—British Population of the western coast of Britain from the Clyde to the Land's End—Conquests of British territory by Ecgfrid—Carlisle granted by him to St. Cuthbert—English continue to gain upon the Cumbrian Britons—capture and destruction of Alcluid—many of the Britons of Strath Clyde emigrate to Wales—Strath Clyde and Cumbria become subject to a line of Scottish Princes—they join the great confederacy against Athelstane—Dumnhail, or Donald, conquered by Edmund, who grants Cumbria to Malcolm of Scotland, who holds the same as a fief or benefice—agreement or settlement that Cumbria should be held as an apanage by the Tanaist of the Scots—Indulf, Duff, Malcolm II.—Homages rendered by these Princes to the Anglo-Saxon Crown—Edgar, his triumph on the Dee—Eight Kings perform homage to Edgar, Malcolm, the King of Cumbria, being one of them—Malcolm III. performs homage to Ethelred, but refuses to contribute to the payment of the Danegeld—Duncan, Regulus of Cumbria—refuses his allegiance to Canute—Duncan compelled to perform homage to the Dane—Malcolm Canmore succeeds to the Scottish crown, and also to Cumbria—Cumbria after the Norman Conquest—North Cumbria, now the shires of Lanark, Renfrew, &c., retained by the Scots—Notices concerning its continued existence—its British Population—the Britons gradually lose their Celtic language—Laws of the Brets, or Britons, abolished by Edward I.—English Cumbria.

THE victories gained by Ceadwalla indicate the power which the Britons might have exerted, had they combated under better auspices. Their numerical force, as well as the advantages derived from the natural bulwarks which encircled their territories,

Part I. Ch. XIV.

might have insured a more permanent success, but their opponents were their superiors in unity and in plan; and, perhaps, in steady and determined valour. Oswald regained all that Edwin had lost. Angles, Britons, Scots and Picts, the four predominant nations of the island, were compelled or induced to acknowledge the Northumbrian as Bretwalda. Oswald was brave and prudent, and his virtues assisted in extending his empire. Humble, lowly-minded, and pious, the qualities which caused him to be canonized after his death, were rewarded by the love of his subjects during his lifetime; and the epithet of "*Llanigwin*" the "Fair," or, perhaps, the "Bounteous hand," bestowed upon him by the Britons, is, perhaps, the only token of affection ever displayed by the Cymri towards a Saxon sovereign.

Oswald of Northumbria regains all the authority of his predecessor. The "four nations" of the island acknowledge him as Bretwalda or Emperor. (See II., p. 568.)

(Nennius, p. 117.)

Like Edwin, however, Oswald was the object of the most inveterate hostility of the "rebel" Penda, by whom he was slain in the battle of Maserfelth[1]. Oswio, the brother of Oswald, succeeded to his kingdom. This monarch did not at first enjoy the full supremacy possessed by his predecessor. Deira was for some time divided from Bernicia, under Oswin, a dependent sovereign, descended from the same stock as Edwin, and Alchfrid, the son of Oswio, disturbed and contested his father's authority. Yet the dominion of Oswio extended even to the Pictish provinces; and the jurisdiction of the Metropolitan of York expanded to the fullest bounds of the power possessed by the sovereign. The Scots, also, submitted to his rule: he cast them down, coerced them, and compelled them to become his tributaries. And although the subjection of the Britons to his crown is not specifically stated, still the title of Bretwalda implies in itself, and from the very force of the term, that they were subjected to his imperial authority.

642. Oswald defeated and slain by Penda, at Maserfelth. Oswio, his brother, succeeds to Bernicia, and afterwards to Deira, obtains the authority of Bretwalda, subdues the Picts and the Scots.

Whilst the tide of conquest was absorbing the British power and the British race, on the eastern side of that range, sometimes termed the British Apennines, the Cumbrian kingdoms maintained their nationality with more success; and continued, for a much longer time, to sustain the honour, or, at least, the existence, of the British name. Alcluid itself, their capital, might defy hostility; and the rocks, the hills, the lakes and forests, which formed their boundary, separated and protected them from their Saxon enemies. Soon after the extinction of the Roman power, the Cumbrians, together with the Western Britons, were united for a time under the dominion of Eneon Urdd, and constituted the most influential amongst the British

Cumbrian kingdoms; the British states on the north-western side of Britain, including Strath Clyde, Reged and Southern Cumbria. Sometimes called the kingdom of Strath Clyde, this being the predominant state.

Alcluid (afterwards Dunbreton or Dumbarton), capital of the Cumbrian kingdoms.

Eneon Urdd, King of Cambria and Cumbria.

states[a]. The successors of Eneon Urdd continued to govern with some degree of splendour and good fortune. Here was the seat of Rhydderch Hael, or Roderick the Munificent, the descendant of Tyrant Maximus, less known as the opponent of Ida, than from the part assigned to him in the adventures of the Caledonian Merlin. Arthur also appears upon the scene, and the chasms of authentic history are supplied by the splendid pageants of the Monarch of the Round Table, and the exploits of his chivalry. According to the most probable opinion, the "Regnum Cumbrense" comprised the entire tract as far as the Friths which bounded the original Pictish territory, afterwards occupied by the Scots. The name of *Cumbria*, however, was a general term derived from the appellation of the people, the *Cymri*, and the state included at least three great principalities. I. "Reged" may perhaps be placed in the forests of the south of Scotland, where the floating traditions of Arthur and Merlin have survived the storms of many centuries[b]. II. "*Strath*-Clyde" may be traced in Clydes-*dale*, and the local name ought in strictness to have been confined to that region, but being the seat of the "Teyrn," to whom the other British Kingdoms of the north were subject, the same appellation was easily extended beyond its proper boundary, just as, in common parlance, we often give the name of King of England to the sovereign of the United empire. III. "The Terra Cumbrorum," the last of these principalities, included the modern county of Cumberland, together with its appendages, or dismemberments, Lancashire and Westmorland, the latter of which may be traced as the principality or kingdom of "Westmere." A considerable portion of the so called English population of Northumbria, probably consisted of Britons who had amalgamated with their conquerors; and many dependent tribes, as yet unmixed, which rested, as it were, upon this kingdom, extended far into the borders of English or Saxon Northumbria. Elmet, conquered by Edwin, was one of these minor communities, and one of the slight and casual hints, so valuable in the history of early times, enables us to judge that the expulsion of the British prince was occasioned by his reception of a relative of the English king, then exiled from his kinsman's realm. Other British clans, perhaps, continued to subsist under

Rhydderch Hael, or Roderick the Munificent.

(See II., p. 614.)

British states dependent upon the "Regnum Cumbrense" and stretching to Northumbria.

Elmet conquered by Edwin 617–625. (See II., p. 565.)

[a] I make these statements upon the authority of Wynne's Caradoc, and Llwyd.

[b] Leyden, Introduction to the Complaynt of Scotland, p. 227.

Part I. Ch. XIV.

the suzerainty of Northumbria. "Loidis," or Leeds, was described as the frontier town between the Britons and Danish Northumbria[a]; one important point of the boundary dividing the nations can thus be ascertained; and one "Commot" obtains the praises of the British bards, because its inhabitants had refused to mix with the Saxons when all the others had lost their language[b], and become entirely estranged from their Cymric countrymen. The Cumbrian Britons thus retained possession of the land from the Clyde to the Dee. Not existing entirely as an unmixed people, for the Picts as well as the Scots had insinuated themselves within the British boundary; nor in the character of independent communities, for they were always subjected, more or less, to the English kings. Yet the homage which they paid, and the tribute which was exacted, often relieved both nations from the misery of protracted warfare. Tranquillity ensued, and there is no notice of any further loss of territory by the Britons, until the reign of Ecgfrid of Northumbria.

Leeds, the frontier town between the Britons and Anglo-Danes.

Ecgfrid was extensively engaged in hostilities, from the beginning of his reign. When young, both in age and in government, the "bestial Picts," scornfully termed thus by Saxon arrogance, then governed by a chieftain or Regulus, named Bernhaeth, became impatient of their dependence upon the Saxons[c], and endeavoured to throw off the yoke of servitude. But Ecgfrid, mild and beneficent to his own subjects, was terrible to his enemies, and collecting his army, he wholly defeated the Picts, and reduced

671. Picts under Bernhaeth rebel against Ecgfrid, and are totally defeated by him. (See II., p. 571.)

[a] As appears from the Life of St. Cadröe, Acta Sanct. Martii i. p. 477. He was conducted by Douenald, King of Cumbria, usque Loidam civitatem, quæ est in confinio Normannorum atque Cumbrorum, a quo perducitur ad Regem Erichium in Evoracum urbem. [As far as the city of Leeds, which is on the borders of the Northmen and the Cumbrians, from whence he was led to King Eric in the City of York.] Leeds was therefore close upon Donald's kingdom, perhaps included in it.

[b] The commot of Carnoban, in Deira. (Triads, p. 376.) Perhaps Craven.

[c] Eddius, Vita Sancti Wilfridi, c. 18. Subjectionem Saxonum despiciebant. [They despised the rule of the Saxons.] Although the Northumbrians were probably Angles, still they were commonly called *Saxons*, a name which the Gael continue to apply to them to the present day. Eddius wrote about the year 720; it is evident, therefore, that the designation was not bestowed in consequence of any supremacy of the West Saxons.

them to their "pristine subjection." The language employed by the contemporary writer implies, that the other nations of the north confederated with the Picts. The Britons were unquestionably amongst them. Ecgfrid, therefore, used the rights of a conqueror, and, in the great council, or synod, held at Twyford, upon the borders of the Alne, he bestowed the Roman city of Carlisle, or Lugubalia, and a territory of fifteen miles round about the same, upon St. Cuthbert; or, in other words, he annexed the dominion of the soil to the temporal possessions of the see of Lindisfarne. Another donation, by which "Cartmel" was given to St. Cuthbert, "with the Britons belonging to the same," affords a proof, that the district now called Lancashire continued still inhabited by the primeval race, though belonging to the Northumbrian sovereign. The victories of Ecgfrid, which may be traced by these donations, disjoined the kingdoms of Strath Clyde and Cumbria. He boasts that the British Clergy fled before his sword. Their churches were granted to the English priesthood, and the proscription of the clergy was probably accompanied by the expulsion of the people at large[a]. By the occupation of the Roman city of Carlisle and its surrounding district, a territory was interposed which could at any time be used as a point of attack by the English. The Cumbrian Britons were, in like manner, menaced on the south by the positions taken on their shores. This conquest had, probably, been made by maritime invasion; for, like their ancestors of old, the Saxon Kings were still the monarchs of the sea. In an unsuccessful invasion of the Pictish territory, Ecgfrid was slain, and the Britons of Strath Clyde, obtaining a temporary relief from the Saxon power, were enabled to reassert their ancient freedom[b]. But this transient gleam of prosperity soon passed away; never yet did a Celtic people maintain their ground against a Teutonic enemy.

685. Carlisle bestowed by Ecgfrid upon St. Cuthbert; Cartmel, in Furness, with the Britons belonging to the same, also granted by him to the Bishops of Lindisfarne. (See II., p. 573.)

We may discern the rapid decline of British ascendancy in the victories of Eadbert of Northumbria, who, penetrating across Strath Clyde, deprived the Cymri of the plains of "Cyil,"[c] in which they were mingled with the Scots. A still greater blow was given to the Britons by the capture of Alcluid, after which their kingdom never recovered its consequence. Eadbert, ruler of all the "English," the Scots, the Britons, and equally so of

Kyle (A.D. 750) and Alcluid (A.D. 756), conquered by Eadbert, King of Northumbria, with the aid of Unnust, King of the Picts. (See II., pp. 575, 617.)

[a] See Part II., *Proofs and Illustrations*, p. 572, note a.

[b] Bede, lib. iv. c. 26.

[c] Kyle in Ayrshire, chronicle appended to Bede, p. 224.

Part I. Ch. XIV.

the Picts[a], with his vassal, Unnust, King of the last mentioned nation, led his forces against the British capital, which was surrendered by treaty to the besiegers[b]. The day, the month, and the year of this event are stated with a degree of precision seldom found in the ancient chroniclers; but if we possessed a fuller account of this event, we should, perhaps, find that the ancient dynasty was extinguished, and that the Britons received a new sovereign from their conquerors.

The Britons still existed as a race; they were still settled in Albion, as one of the Four Nations of the Isles. Alcluid, though not exempted from the calamities of war, continued to be the seat of a British monarchy until the repeated incursions of the Dane involved the Northern Cymri in the same misfortunes as were experienced by their enemies. Alcluid was wholly razed to the ground. The "Black Strangers" were resistless, and the Britons, the Saxons, Angles, and Picts were mingled in captivity beneath the yoke of Olave and Ingwar[c].

869, 870. Alcluid destroyed by the Danes. (See II., p. 617.)

(See above, p. 39.)

When Halfdane settled and divided Northumbria, he renewed the invasion: Picts and Britons were alike the objects of the fury of the Northmen[d]. Harassed by these ceaseless ravages, many of the Britons abandoned the country which they had so long defended, and sought refuge with their kindred in Gwynedd, where, as it is said, their descendants can yet be distinguished by their peculiar features, and by the tones or inflections of their dialect. Yet subsequent events must convince us that this emigration only affected a part of the British territories; and it is probable that the inhabitants of Annandale and Teviotdale alone gave way to the invaders.

Inhabitants of part of Strath Clyde emigrate to North Wales. (See II., p. 617.)

In consequence of the demolition of Alcluid, the government, or rather the residence of the sovereign who ruled the Britons, was now transferred to Southern Cumbria, which still formed one

[a] Sim. Dunelm., Historia de Dunelmensi Eccl., lib. ii. c. 3.

[b] Ann. Ulton., ad an. 756. Sim. Dunelm. (p. 105), ad an. 756. Eadberht Rex octodecimo anno regni sui, et Unnust, Rex Pictorum, duxerunt exercitum ad urbem Alcwith. Ibique Brittones inde conditionem receperunt, prima die mensis Augusti. [King Eadbert, in the eighteenth year of his reign, and Unnust, King of the Picts, led an army to the city of Alclyde, and there the Britons received conditions of peace on the first day of the month of August.]

[c] Ann. Ulton., ad an. 870.

[d] Asser, p. 27 Sax. Chron., ad an. 875. Wynne's Caradoc. Llwyd, p. 41.

state, with the fragments of Strath Clyde. Depressed and weakened by the incursions of their enemies, the subjection which might have been galling to the Britons in the days of their prosperity, became a boon in the hour of danger; and the inhabitants of Strath Clyde and Cumbria, submitting themselves to Edward the Elder, accepted him as their Lord and Father, and became the vassals and subjects of his crown.

921. Britons of Strath Clyde and Cumbria submit to Edward the Elder, and accept him as their Lord. Edward is styled King or Ruler of the Britons. (See II., pp. 358–365.)

Hitherto we have considered the Britons of Strath Clyde as constituting a distinct nation, and they retained all the characteristics of nationality—language, manners, and name. Yet it is more than probable, that the old line of British Princes had long since ceased, and that when the Britons performed homage to Edward, they were then governed by sovereigns deducing their origin from the nations who not only surrounded them, but who, in many parts, were interspersed amongst their own territories. "Aidan, the son of Gabran," whom Bede terms King of the Scots inhabiting Britain[a], is reckoned by the Cambro-Britons amongst their national sovereigns. It is certain that Aidan appears more than once connected with the Cumbrians; though his valour, displayed in the great battle which he fought against Ethelfrith of Northumbria at Stanmore, was unable to avert the Saxon sword. The perplexing parallelisms of the *fasti* of the Gaelic and British sovereigns have found no other explanation, except in the conjecture, bold as it may appear, that each nation has appropriated to itself the same identical monarch[b]. The epithet of the "Perfidious," which the Britons attach to the name of Aidan, arose in consequence of his conduct towards another British prince, and we may be inclined to conjecture that he was a chieftain belonging to the Scoto-Irish clans, and who had

Britons and Scots perhaps occasionally subjected, in early periods, to the same monarchs. Gabran and Aidan being inserted by both nations in their regal lines. Aidan opposed to Ethelfrith, in the battle at Stanmore (A.D. 603); styled "*Bradawg*," or the Perfidious, by the Britons; probably a chieftain who had obtained the supremacy of some tribes or clans of Britons and Scots, and who contested the supremacy of the chieftain who governed other clans of the Scots.

[a] Bede, lib. i. c. 24.

[b] Llwyd, as a Briton, supposes that the British king was inserted into the line of the Scottish kings. (Æræ Cambrobrittanicæ, p. 144.) The Scots will probably maintain that the Britons appropriated to themselves the fame of their victorious monarch. Gabran, according to the Scottish or Irish Genealogies, is the son of *Domangart*, the son of *Fergus*, and his son, Aidan, is the progenitor of Kenneth; yet the Gabran and the Aidan of the Britons seem to be the same individuals. The latter is called the Perfidious, and he was opposed to Rhydderch Hael. There is no great improbability in supposing that one sovereign might rule part of the Scots and part of the Britons, and that he might be opposed to other clans and tribes of the Scots and Britons.

Part I. Ch. XIV.

obtained the supremacy of the Britons. And though it is absolutely impossible to arrive at any positive conclusion, yet it must be admitted that the hypothesis may be consistent with the truth, even if his authority had been founded upon force or conquest, still more so, if any succession through the female line imparted to him a title of hereditary sovereignty.

Bile, the son of Elphin, King of Alcluid, probably of Pictish race. (See II., pp. 616, 617.)

Before the capture of Alcluid we obtain a transient notice of a sovereign, who, from his name, appears to belong to the enigmatical Pictish race, and he was, perhaps, the son of a Pictish King. Further indications of these alliances increase as we advance.

Daughter of Kenneth Mac Alpin married to Run, King of Strath Clyde. (See II., pp. 617, 626.)

The daughter of Kenneth Mac Alpin was espoused to the British King of Strath Clyde, and their son, Eocha, became the ruler of the Scots. From him, no British ruler can be traced; but immediately after the homage had been rendered to Edward by the Britons, Donald, the brother of Constantine, who is indifferently designated as the King of the Picts and of the Scots, was "elected," in the language of the chronicle, to be King of Strath Clyde, or Cumbria, by the influence of his kinsman; an act exercised, if we may judge from the transactions of subsequent periods, with the assent of Edward, the common superior of the Britons as well as of the Scots.

908. Donald, brother of Constantine, the son of Aedh, King of the Scots and Picts, chosen or appointed King of Strath Clyde.

Upon his death it is granted to his son, Owen or Eugenius, to be held as an apanage by the Tanaist or heir apparent of the Scottish monarchy, until he should obtain the crown. (See II., p. 618.) An analogous mode of succession prevailed in the Anglo-Saxon monarchies, Kent being anciently held in this manner by an Atheling of Wessex. (See II., pp. 464–467.)

Constantine, who had thus obtained the British kingdom for his brother, succeeded, about the same time, in creating a more permanent connexion between Cumbria and the Scottish line; and it was then established as the canon of inheritance, that as soon as he should obtain the crown, Cumbria should pass to the next heir; so that the dominion of the Scots and of the Cumbrians would be never united in the same person, although the kingdoms would always remain in the same family[a].

[a] Fordun, lib. iv. c. 21. This *shifting use* of the kingdom of Cumbria is as well authenticated as any other portion of early Scottish history. Fordun is unduly depreciated: he committed many errors, and adopted many fables, but he used materials which are now lost. Higden, also, contains much curious matter, not now extant in its original shape. It is evident, that though Strath Clyde and Cumbria were sometimes noticed separately, yet they constituted but one state, being the "*Cumbria inter Angliam et Scotiam sita*," the "*Parochia Cumbrensis*," the "*Regio Cumbrensis*," of which the Scots had possession. It was treated as a principality, and governed according to its peculiar usages and laws; and this appears clearly by the evidence of the Inquisitio Davidis. After the Conquest, the name was more generally applied to English Cumberland. Upon the government of Cumbria by the

937, 938. Eocha, or Eugenius, with Constantine, and other kings of the North, in the great battle of Brunnaburgh, in which they are defeated by Athelstane. (See II., pp. 375, 619, 626.)

Eocha, whose name is softened and fashioned by the chroniclers into "Eugenius," or "Owen," soon afterwards appears, together with Constantine, in the most memorable battle of Brunnaburgh, when the Reguli of the north endeavoured to cast off their dependence upon the Anglo-Saxon monarch[a]. Athelstane triumphed in this great conflict; yet, instigated by the Danes, the Scoto-Cumbrian kings continued their struggles, and laboured to release themselves from the Saxons, being assisted in this attempt by the Danes, with whom they appear to have been closely allied. Indeed, the Celtic nations of North Britain, amongst whom the Scandinavians were implanted, were almost amalgamated into one people with the invaders[b].

945. Donald, son of Eugenius, rebels against Edmund, is defeated, his sons are blinded by the victor, he escapes, and dies a pilgrim at Rome.

Donald, the son of Eugenius, rebelled, like his father, but he sustained a more signal punishment. The victory gained by Edmund placed the country, which he had wasted and depopulated, entirely in his power. In this expedition the King of Wessex was aided by the forces of Llewellyn of Demetia. And though the sword of a vassal, like Llewellyn, was to be unsheathed at the behest of his superior, without any restraint of feeling, even if he had been called upon to attack a prince of his own race, yet as the Cumbrian monarch was of Scottish blood, and not a Briton, this circumstance diminishes one of the harsh features of a war conducted with more than usual ferocity. The young sons of Donald were blinded, a savage punishment inflicted upon them for the contumacy of their father. The "perfidy of the Cumbrians," by which we can only understand the violation

Scottish kings, Macpherson (Inquiry) may be consulted; and although critical accuracy is not to be expected from the editor of Ossian, still his work may be perused with advantage.

[a] Sim. Dunelm., Hist. Eccl. Dunelm, c. 25.

[b] Fordun, lib. iv. c. 22. Northumbriæ quidem gentes et Cumbriæ, Scotis et Danis jamdiu fideliter tanquam una gens conglutinatæ, libentius sibi quam Anglis subjici curabant. [Indeed, the races of Northumbria and Cumbria, who were already faithfully united with the Scots and Danes, as if they were one people, were more willing to be subject to them (i.e. the Scots and Danes), than to the English.] Eric, the Danish King of Deira (see Part II., *Proofs and Illustrations*, p. 592), was married to the kinswoman of St Cadröe, and St. Cadröe was a kinsman of Donald (Vita S. Cadröe, *ut supra*). We cannot collect the exact degree of affinity between the Danish queen and the Scoto-British prince, but it shews the alliance between the families. Aulaf the Dane was the son-in-law of Constantine.

of their oaths of fealty, or such oaths as King and People had rendered to Edward when they chose him for their "Lord and Father," and became his vassals, was the cause of the hostility. Donald himself escaped the vengeance of the conqueror. That he was present in person in the fatal battle, is rendered highly probable, from the rude monument which yet bears his name[a]. But Donald's life would scarcely have been spared by that hand which inflicted so severe a punishment upon his progeny, had he fallen into the victor's power; and accident, or good fortune, if good fortune it can be called, enabled him to reach the threshold of the apostle, where he died a penitent and a pilgrim.

(See II., pp. 358–361.)

The transactions which ensued, afford a most important insight into the policy of the Anglo-Saxon empire. Edmund was now master of the vacant throne, and he might have retained possession; but it was more politic to restore the crown to the Scottish family or line. The monarch of Britain acted as a Roman emperor might have done; the "Limitanean land" was to be received as the price of defence against a neighbouring enemy. Cumbria was regranted to Malcolm of Scotland, as a Benefice, upon condition that he should co-operate with the King of Wessex by sea and by land, and most particularly against the Danes. This engagement, as usual, was ratified by the oath of fealty. The Scottish chroniclers add, that the rule of succession established by Constantine, received a new sanction from the compact of the monarchs. Indulf, the son of Constantine, and the designated successor of Malcolm, was appointed King of Cumbria; Malcolm, however, continued as the mesne lord of the country; and the homage and fealty which Indulf also performed, and which were to be repeated upon each change of Lord and Vassal, were to be considered as the means of ensuring his aid against the Danes,

Cumbria granted by Edmund to Malcolm, King of Scots, upon condition of military service. Malcolm transfers the kingdom to Indulf (afterwards King of Scots), the Tanaist, according to the rule of succession established as before-mentioned. (See II., pp. 378–381.)

[a] *Dumnail-raise*, a cairn by the side of the highway, leading from Keswick to Ambleside, and standing on the boundary between the modern Cumberland and Westmorland (Nicholson, vol. i. p. 149). The English authorities all speak of the grant to Malcolm. From Fordun (see Part II., *Proofs and Illustrations*, pp. 381, 384) we become acquainted with the cession to Indulf, who seems also to have repeated the oath which had been taken by his father, a statement which is not in the slightest degree inconsistent with the brightest narratives. Donald is also called Dumnail, Dunvallo, Dunwalhon, and Dunail. The punishment inflicted upon the sons of Donald is mentioned only by Florilegus, as quoted in the *Proofs*.

the pagans of the north, who, notwithstanding the victories of Athelstane and Edmund, were firmly established beyond the Humber. Upon the death of Edmund, Indulf renewed the act of homage to Edred, and he held the kingdom until his accession to the Scottish crown. The accustomed oath of fidelity was rendered with equal punctuality when Duffus, the son of Malcolm, became entitled to the apanage which Indulf had vacated. A portion of the kingdom seems to have devolved upon Anderach, of uncertain lineage. Malcolm, son of Duff, acquired the dependent principality, and probably at the time when his father succeeded to the Scoto-Pictish crown: the exact mode, however, of his accession is obscure, and it is not certain that the succession in these disturbed times proceeded with entire regularity. The subsequent portions of the history of this monarch, however, are told with more detail. At the request of Kenneth, Edgar accepted Malcolm Mac Duff as Regulus of Cumbria. In this capacity Malcolm appears as one of the "Primates" attending the Court; and when the "Basileus" of the Isle of Britain, "Lord of the Sceptres of the Scots, the Cumbrians, and "the Britons," made that memorable display of his power at Chester, the Cumbrian Regulus was one of the eight vassals who renewed their oaths of fealty to their common sovereign. Amongst the others were Judicael, the King of Westmere, and Jacob, a King of the Galwegians, both, probably, then considered as appendages of the ancient kingdom of Cumbria[a].

Indulf repeats his homage to Edred, becomes King of Scots, upon which Cumbria passes to Duff, elder son of Malcolm. (See II., p. 384.)

Malcolm Mac Duff, or Malcolm II. of Cumbria, accepted as Regulus by Edgar; attends his court as a vassal, as appears by his signatures to Edgar's charters, 970 (see II., p. 394), 974 (id., p. 399). One of the Subreguli performing homage at Chester to the Basileus of Britain, 974 (id., pp. 400, 401).

Malcolm, the son of Kenneth, who, like his predecessors, had been admitted into the possession of the Kingdom of Cumbria, after performing the "usual ceremonies"—as they are called by Fordun—of homage and fealty, refused to contribute to the payment of the Danegeld, demanded by Ethelred the Unready, alleging that he owed no other service except in the field, and when summoned by the Anglo-Saxon king. And it would have been happy for England if her sovereigns had withheld the wretched tribute, which purchased, not the forbearance, but the hostility, of the Pirates of Scandinavia. Ethelred, accusing Malcolm of conspiracy with the Danes, marched his army against Cumbria,

Malcolm II. of Scotland and III. of Cumbria, son of Kenneth, Regulus of Cumbria. Performs homage to Ethelred, but refuses to contribute to the Danegeld. (See II., pp. 407–408.)

A.D. 1000. Ethelred considers this refusal as a violation of his oath of fealty, and attacks Cumbria.

[a] *Westmere*, is probably no other than Westmorland (Usher, Antiq., p. 303). An obscure notice of the dissensions which prevailed amongst the British rulers is perhaps preserved in the ancient verses quoted by Usher: "Here the King of Westmere slew the King Rothynger"; the latter is also called Rodric or Rhydderc.

Part I. Ch. XIV.

and, construing the refusal as an infraction of the oath of fealty, he wreaked his vengeance by wasting the country possessed by the contumacious and disobedient vassal. Notwithstanding this hostility, Malcolm did not consider that the ties between Cumbria and its paramount sovereign were dissolved. When he surrendered the kingdom of Cumbria to his grandson "the gracious Duncan," without soliciting the previous consent of Ethelred, he did not contend that he was exonerated from the necessity of obtaining the sanction of his superior; circumstances alone excused him; and it was alleged, that he was withheld merely by the difficulty of traversing the territories occupied by the Danes, or peopled by the revolted subjects of Ethelred, who, to the faithlessness of the rebel, added the ferocity of an enemy[a].

Malcolm III. of Cumbria surrenders the kingdom to his grandson, Duncan, but without withdrawing his due fealty to Ethelred. (See II., p. 408.)

Duncan refused to Canute the homage which he would have rendered to Ethelred. Summoned to acknowledge himself the vassal of the Dane, he is said, by the Scottish chroniclers, to have denied that the intrusive monarch had any right to the supremacy, which was to be claimed only by a king of English blood. Canute asserted his legitimacy by the last argument of kings. Returning from his pilgrimage to Rome, he led a most powerful army against the Cumbrians and the Scots. Malcolm, espousing the cause of his relative, came forth to meet the invader. Canute obtained the advantage in the war; the country was ravaged, but a pacification ensued, and his success did not impose any additional burden upon Duncan, who agreed, for himself and his successors, to yield to the Dane, and the future Danish kings, the fealty which hitherto had belonged to the line of Cerdic, and to perform the conditions by which the kingdom had been hitherto held: consequently, when Duncan acquired the Crown of Scotland, the Benefice, or *Læn*, of Cumbria was bestowed upon Malcolm Canmore, his son, who was recognized as the heir to the crown, not, indeed, according to the ancient custom, but pursuant to the doctrine of lineal succession, which was now beginning to be adopted in the Celtic communities.

Duncan, Regulus or King of Cumbria, refuses allegiance to Canute, whom he considers as a usurper of the English crown. (See II., p. 417.)

1032. Canute marches against the Cumbrians and Scots, and reduces them to obedience. (See II., p. 417.)

Duncan submits to perform homage to Canute.

Upon the accession of Duncan, as King of Scots, Cumbria passes to Malcolm Canmore (see II., p. 417), his son, and heir apparent, according to the rules of lineal succession which now began to obtain amongst the Scots.

When Malcolm, by the aid of his superior, Edward the Confessor, was restored to the possession of Lothian, and to his rights as King of the Scots, it appears that he retained Cumbria in his own possession. This was entirely in consistency with the new theory of royal succession. The claim of a Celtic Tanaist

1056. Malcolm Canmore, after having been expelled by Macbeth, restored to the possession of Lothian and his rights as King of Scots, by Edward the Confessor (see II., p. 424), retains Cumbria in his own

[a] Fordun, *ut supra*.

was no longer acknowledged, and Malcolm himself had, as yet, no child, to whom the Benefice could descend.

Upon the Conquest of England, Malcolm, imitating the example of his father, refused to acknowledge the title of a strange king. Malcolm, betrothed or married to the Princess who represented the family of Cerdic, and the protector of the Anglo-Saxon exiles, at last declared war against the Norman. Hostilities were carried on with vigour and ferocity; but after a long and protracted conflict, the forces of William overcame his adversary. Homage was performed by Malcolm at Abernethy, and this act must be construed with relation to the other territories held by him, and which had been included in the ancient kingdom of Bernicia, for the Scottish vassal did not obtain a restitution of Southern Cumberland, which the policy of William intended to convert into the boundary and defence of his newly-acquired realm.

hands, he having no children at that time, and the law of Tanistry being disused.

Refuses to acknowledge William the Conqueror.

1072. Malcolm performs homage to William the Conqueror at Abernethy (see II., p. 629), but does not obtain a restitution of Cumberland or Southern Cumbria.

Strath Clyde and the dependencies of Strath Clyde beyond the Solway and the Kershope, which divided the country now usually called Scotland from England, continued to be held by the Scottish kings. Whether they were or were not in possession of Cumberland in England, this portion was still nominally considered as the Cumbrian kingdom. The state policy of this conduct is obvious. The right was asserted to the whole, just as the valleys of Navarre, beyond the Pyrenees, continued to be viewed as the ancient realm by Henri Quatre and his successors, though they were despoiled of the larger portion of their inheritance; and when the Scottish monarchs performed homage to the Kings of England, in those general terms which afforded a temporary satisfaction to the contending parties, the submission was sufficient to cover their claim for the whole kingdom or principality.

Strath Clyde, and those portions of Cumbria beyond the modern boundary of Scotland, i.e., the shires of Dumbarton, Renfrew, Lanark, &c., in possession of the Scottish monarchs, considered as the Cumbrian kingdom, and generally bestowed upon the heir apparent, or upon some younger branch of the royal family.

I shall not attempt to investigate the steps by which the districts included in Strath Clyde gradually lost their identity and peculiar government, and merged into the Scottish lowlands. It is sufficient to observe, that Cumbria[a], when held by David,

1118. North or Scottish Cumbria, or Strath Clyde, &c., still considered as a distinct state, when

[a] David was styled "Cumbrensis Regionis princeps" [prince of the Cumbrian region]. In this capacity he caused (about 1116) an "inquest," or inquisition, to be taken concerning the possessions of the bishopric of Glasgow, many of which had been usurped. This proceeding, according to the ancient usages, was made in a great assembly of those persons who constituted the supreme court of legislature,

Part I. Ch. XIV.

held by David, son of Malcolm Canmore, and brother of Alexander, then King of Scots. (See II., p. 622.)

the son of Malcolm Canmore, was still, in all respects, a distinct commonwealth. The Cumbrian Judges and "wise men" were convened before their "Prince," and the boundaries of the ancient kingdom are faintly traced on the last authentic record of its history.

The foundation or re-establishment of a cathedral at Glasgow was accompanied by an influx of Saxon inhabitants from the neighbouring Lothian. Yet the Britons, though pressed on every side, and slowly commingling with other tribes, continued to inhabit the land of their forefathers. In the charters of the Scoto-Saxon kings, the "Wallenses" are addressed as a distinct race[a], and are enumerated amongst the five nations who dwelt in the Cumbrian diocese. Governed in a manner analogous to the other clans of the north, we may conclude that they retained their "heads of lineages" until these chieftains were gradually confounded with the feudal nobility of the predominant state and people. Civilization, however, made but slow progress in Strath Clyde. John the Monk, when nominated to the see of Glasgow, attempted to fly to Jerusalem, to escape his preferment, so much was the pastor appalled by the ferocity of his flock; and loth and unwilling, he was compelled to accept the dangerous charge[b]. Great and inordinate vices are said to have prevailed amongst them. The promiscuous intercourse between the sexes had not been corrected by the introduction of Christianity. In this respect the Scoto-Pictish inhabitants of Galloway were not less culpable,

1152–1165. "Wallenses" a distinct race in the reigns of Malcolm the Maiden and William the Lion.

Wallenses of Strath Clyde a barbarous race. John, Bishop of Glasgow, afraid to accept his charge, on account of the ferocity of his flock.

such as it was, of the country. In this document the bishopric of Glasgow is described as the bishopric of Cumbria, but the inquiry was confined to those provinces of which David was in possession; terras ecclesiæ Glasguensi pertinentes, singulis Cumbriæ provinciis, quæ sub dominio et potestate ejus erant, inquirere fecit, non enim toti Cumbrensi regioni dominabatur. [He caused inquiry to be made concerning the lands belonging to the church of Glasgow in every province of Cumbria which was under his dominion and power, for he did not rule over the whole region of Cumbria.] The Inquisitio Davidis, is contained in the Cartulary of Glasgow, and has been published several times, but its topography yet needs much illustration.

[a] The charters of Malcolm IV., and William the Lion, his successor, concerning the payment of tithes in the bishopric of Glasgow, are thus addressed; Francis et Anglis, Scottis, *Wallensibus* et Galweiensibus, Cart. Glasg. pp. 203, 205. Gibson, p. 226. [To French, and English, Scots, *Welsh*, and men of Galloway.]

[b] Inquisitio Davidis; Pinkerton, vol. i. p. 517.

but in Cumbria the possessions of the church were usurped, and the resentment of the clergy may have added some degree of bitterness to their accounts of the failings of the British people. The period when the uncouth British names began to give way to the appellations introduced by those races, who were acquiring the dominion of the soil, can be distinctly ascertained[a]. But the fragments of Cymric population still stubbornly retained their own laws until the fourteenth century. And the ordinance, made by Edward of England in his Parliament at Westminster[b], abolished the customs and usages of the "Brets"—an exercise of sovereign power which the Kings of Scotland had been too weak to enforce, or too lenient to demand—and the Deputies of the Scottish Estates who attended the Parliament concurred in the comprehensive enactment which summarily abolished, not only the Cymric, but the Celtic laws.

1305. "*Brets*" retain their peculiar laws until they are abolished by Edward I., in his Union Parliament.

"Cumberland"—for we must now call the Dominion by its modern appellation—was, as I have observed, retained by the Conqueror. Malcolm had invaded the country[c]; but he could not defend the territory against William, who granted Cumberland to Ranulf de Meschines, one of his Norman followers[d]: and the border Earldom became wholly assimilated, in its political character, to the other great baronies of England.

Cumberland granted by the Conqueror to Ranulf de Meschines, about 1072;

[a] And with considerable precision as to date. In the Inquisitio Davidis "Pentejacob" is found to be part of the possessions of the see of Glasgow. But when Bishop Ingelram, within fifty years afterwards (about 1164), feued the lands, quæ *olim* vocabantur "*Pentejacob*" [the lands, which were *formerly* called *Pentejacob*], to Richard de Somerville, they bore the name of *Gillmoriston*. (Gibson, p. 12.) It may be remarked, that if Buchanan was correctly informed, the British, or rather Pictish, was still spoken in his time in the remote parts of Galloway. Father Innes (vol. i. p. 39), though still not often inclined to favour the authority of the Calvinist, does not seem to discredit him.

[b] In three weeks of St. John Baptist, 33 Ed. I. 1305.

Endroit des leies et usages pur le gouvernement de la terre d'Escosse, ordonee est que l'usage de *Scot* et de *Bret* desore endroit soit abolie, si que mais ne soit usez, Parl. Writs, vol. i. p. 268. [As to the laws and customs for the governance of the land of Scotland, it is enacted that the customary law of *Scot* and of *Bret* be henceforth abolished, so that it be no more current.]

[c] Sim. Dunelm., Hist. Dunelm. Eccl., p. 200. Hoveden, p. 452.

[d] Cumberland was in possession of Earl Ranulf in the quoted year. (Florilegus.)

Part I. Ch. XIV.

As such, it was frequently held by the Scoto-Saxon monarchs. They never surrendered their rights, or, in other words, their duties, as liegemen of England, for these and other domains; and Cumberland was from time to time restored to them by the justice or policy of the English sovereigns, until the reign of Alexander, after which it never was severed from the English crown.

With the exception of Carlisle.

Carlisle was always excepted from these grants. The city and the territory of fifteen miles in circuit had become English by Ecgfrid's donation, and probably was always held, either by the Kings or Earls of Bernicia, or of Northumbria. Little further is known concerning "merry Carlisle," the seat of Arthur's chivalry. Until the reign of William Rufus, this city, desolated by the Danes, was almost void of inhabitants. William completed the restoration of its walls and towers, which his father had begun. The Burgh was garrisoned by the vassals whom the king introduced, and the surrounding country, which had relapsed into waste, was settled by the peasantry, who, with their families and stock, were removed from the south, for the purpose of tilling the deserted, though not ungrateful, soil.

William Rufus plants a colony of 'Ceorls' from the South, in and near Carlisle. Reasons for supposing that they were the inhabitants of the townships thrown into the New Forest. (Sax. Chron.)

The practice, so common in Asia, of removing whole communities of cultivators to gratify the cupidity, or serve the policy of the sovereign, was not infrequent in Europe during the middle ages. In this instance it was, perhaps, the consequence of another act of despotic power. From what source was this population supplied? Whence were they expelled? William would have ill consulted his own interests, if he had withdrawn the villeinage from the royal demesnes which supplied the consumption of his Court, and increased the revenues of his Exchequer. Even the "Red King" would not have dared to rob his Barons of the tenantry annexed by law and custom to the glebe which they held as their inheritance; and I suspect that the original domicile of the "churls," whom he thus transplanted from the south, is discovered in the tracts, from whence they had been expelled by his father, to afford free range for the wild deer of the forest: and where Tyrrel's glancing arrow transfixed the heart of the hated tyrant.

Memorials of the existence of the ancient British population of Cumbria,

In those portions of ancient Cumbria which were detached from the main kingdom, such as the land beyond the Ribble, and the shire of Westmorland, it is probable that most of the superior landholders were of Anglo-Saxon or Danish race, mixed, perhaps, with the Britons, but reckoning themselves as

Englishmen. And it seems, also, that the Danes had partly blended themselves with the ancient population. The topography of Cumberland, and the adjoining districts[a], still affords many reminiscences of the Celtic age. British traditions yet linger in the land. Pendragon Castle reminds the traveller of the fabled Uther. The lakes and streams and mountains retain some of their pristine appellations; and Helvellyn and Skiddaw rise as the sepulchral monuments of an entire nation which has passed away.

names of mountains and rivers, and traditions.

[a] Gibson's Camden, p. 1002. It has been remarked by Thoresby (Ducatus Leodensis, vol. i. p. 212), that in Yorkshire the names of towns and villages are generally Saxon; the rivers, and the woods into which the natives retired, retain the British names, though mostly compounded with a Saxon word or name, as *Coit* Berton. Sometimes the Saxon is only a translation from the Celtic, e.g. *Dour*-water. In Cumberland and Westmorland some of the Cumbrian mountains have a double name, one of Celtic, and the other of English origin.

CHAPTER XV.

Britons of Cambria, or Modern Wales and the Marches—Nature of the Country—its early subjection to the Saxons—British Bishops convened by the authority of Ethelbert, the Bretwalda—gradual retrocession of the Britons—Kingdoms of Gwent, Brecheiniog, &c.—Conquests of Edwin, and of Offa—great part of Powys subdued by the latter—Offa's Dyke—Egbert reduces the Britons—Roderick the Great divides Cambria between his sons—explanation of this division—Welsh Kings, the Vassals of Alfred, of Edward the Elder and of Egbert—Tribute rendered by the Welsh—other obligations of the Welsh Princes—they appear at the Court of the Bretwalda, and submit to its jurisdiction—oaths of fealty taken by them, involving the performance of military service—State of the British Population subject to the Anglo-Saxon supremacy—its density—Britons of the Marches—Hereford considered to be in Wales—Exeter, how occupied by the Britons, or Welsh, and the English—Britons of the West—compact between the English and British inhabitants of Damnonia, or Devonshire.

Cambria or Wales. Country of the "North Welsh," or "Mediterranean Britons." Nature and boundaries of the country.

About the ninth century we begin to obtain a more distinct view of the "Mediterranean Britons," whom the Saxons usually called the "North Welsh,"[a] or the inhabitants of modern Wales, and the adjoining Marches. *Cambria*, according to the traditionary geography of the Britons, comprehended the country beyond the Severn and the Dee[b], by whose streams this portion of Britain was separated from *Lloegria*, the name which the Cymri now usually apply to England. Climate has been supposed to possess much influence upon forms of government. Possibly, this opinion may be fanciful or erroneous; but it is certain that the physical conformation of a country affects its early policy. In those rude ages, when the road cannot be carried up the mountain steep,

[a] See above, p. 339.

[b] Llwyd may be consulted for the authorities relating to the division of the island into *Cambria*, *Albania* and *Lloegria*.

nor the torrent spanned by the arch, communities are shaped out by their natural boundaries, and narrowed by the mould in which they are cast. Cambria seems, from this cause, to have been always disunited; it was severed and subdivided into many smaller clan-lands, communities and principalities, which, according to a Celtic custom, frequently derived their names from their rulers, and changed such names from time to time[a]; therefore, even if we possessed fuller accounts of their history, these varying denominations would still tend greatly to confuse our ideas of Cambrian topography.

Gwynedd, our modern *North* Wales, acquired its appellation from "Cunedda Wledig,"[1] but whether he was the same who appears as the Sovereign of Gododin, a "Tyrant" of the north, or another bearing a similar appellation, cannot be determined. The early Cymric chronicles scarcely ever furnish us with the means of computing time. "*Annus, Annus, Annus,*" is repeated in succession, but no era is marked. The entire absence of dates baffles all attempts which may be made to regulate their chronology, or to knit the fragments into a consistent story. The Welsh, in the days of Giraldus[2], easily accounted for the loss of all memorials of King Arthur, by asserting that Gildas cast his "authentic history" of this renowned prince and his nation into the sea[b]: but the same misfortune appears to have fallen on all the British annals of the next three centuries. British history, during this period, is therefore a mere hypothesis; and, in this truly Cimmerian darkness, we can neither admit nor deny the assertion that all the Cymric principalities, from Alcluid to the mouth of the Severn, were united under the dominion of Eneon Urdd, the son of Cunedda; nor are we possessed of the data, which could enable us to trace the advance of the Saxon power towards the Severn.

British chronicles destitute of dates. Gildas said to have cast all the authentic writings concerning Arthur into the sea.

Eneon Urdd.

Seven British bishops, however, attended the celebrated conference held with Augustine, beneath the Oak[c] which afterwards

[a] The industrious Carte (vol. i. p. 189) has collected some examples of these denominations.

[b] Giraldus Cambrensis, de Illaudabilibus Walliæ, c. 2. Wharton, Anglia Sacra, vol. ii. p. 448.

[c] Augustinus, adjutorio usus Ædilberti Regis, convocavit ad suum colloquium episcopos sive doctores proximæ Brettonum provinciæ in loco qui usque hodie lingua Anglorum *Augustinaes Ac,* id est, robur Augustini, in confinio *Huicciorum* et Occidentalium Saxonum

Part I. Ch. XV.

bore his name; and hence it appears, that the Cymri still possessed a considerable extent of territory in the west. Yet who called the Prelates together? did they not obey a Saxon king? and if we give credit to Bede, we must admit that they were subjected to Ethelbert of Kent, the Bretwalda, by whose authority the synod was convened.

Some few stages of the retrocession of the Britons may be indicated. Farinmail, King of *Gwent*, is enumerated amongst the sovereigns who yielded to the power of Cuthwulf and Cuthwine. Contracted, in later times, to the modern shire of Monmouth, the kingdom of Gwent appears originally to have included a considerable portion of the *Hwiccian* territory, also called *Magesetania*. Conquered by the English, some time before the reign of Offa, this state, almost unknown to the chroniclers, became a kingdom held under the supremacy of Mercia by princes of the Mercian line, and who, bearing the title, sometimes of Kings, but more generally of "Subreguli," attained a considerable degree of pre-eminence and power[a]. Other parts of Gwent, however, continued in the possession of the Britons. The donations made to St. Oudoceus, or to the church of Llandaff, have preserved the memory of many sovereigns of Gwent and the adjoining regions, such as Brecheiniog, or Brecknock; and the recurrence of the names of "Augustus" and "Constantine," indicates the reminiscences of the empire.

(See above, p. 334.)
Kingdom of Gwent first conquered by the Mercians, in which they establish the kingdom or state of the Hwiccas, or Magesetania.
(See II., p. 512.)

appellatur, Bede, lib. ii. c. 2. [Augustine, using the aid of King Ethelbert, called to his conference all the bishops and teachers of the nearest British province, to the place, which, to this day, is called in the English tongue *Augustinaes Ac*, that is, Augustine's oak, on the border of the *Hwiccas* and the West Saxons.] Supposed to be the prelates of Llandaff, St. Asaph, or Llan Elwy, St. Padarn (afterwards annexed to St. David's), Bangor, Chester, Hereford or Fferegs, and Worcester. The Archbishop of Caerleon upon Usk is thought to have absented himself, lest he should prejudice his metropolitan privileges. This enumeration, however, is somewhat hypothetical.

[a] For the succession of these princes, see Part II., *Proofs and Illustrations*, pp. 512–518. I extend Gwent to the Severn, upon the authority of Carte (vol. i. p. 202), but the ancient geography of Cambria can only be satisfactorily elucidated by those who are acquainted with the British genealogies, and who are able to locate the different sovereigns. Many of the Llandaff charters have been printed by Dugdale. Their authenticity is unquestionable. Their agreement in language and form with the Breton charters is very remarkable.

Whilst Northumbria prospered, the Cumbrians suffered greatly from the hostility of the Anglian monarchs. After the victories which Ethelfrith obtained over the Northern Britons, their kinsmen in Cambria felt the keenness of his sword. The capture of the "City of Legions," was long lamented by the Britons; and amongst the kings of English race, no one, as we are told by Bede, gave equal extent to the English power. Edwin was equally successful; every British state acknowledged his empire; the Menavian Islands, the Northern and the Southern Mona were subdued by him. From the colonies which were transplanted into "Mon Mân Cymri," the isle acquired the name which it still bears amongst us, of Angles-ey, though the English themselves afterwards disappeared again amongst the original Celtic tribes.

(See II., p. 564.)

Chester taken by Ethelfrith.

Conquests of Edwin.

Mercia rose to power upon the decline of Northumbria, and the Mercian Angles emulated the enterprises of the Northumbrian kings. The states collectively entitled *Mercia*, or the *Marches*, appear, from circumstances which will be afterwards noticed, to have always contained a very considerable admixture of British population. The Mercian kings were, perhaps, connected with the British race—at least the British names appearing in their genealogies[a] afford ground for this presumption—and Penda, in alliance with the British Ceadwalla, had defeated the Northumbrian king. These circumstances might tend to facilitate the conquests of the descendants of Creoda. Offa, the "terrible Offa," as he was denominated by the Britons, brought all his forces against the inhabitants of the kingdom, which, according to a nomenclature perhaps of later origin, we must denominate Powys. The greater part of the fertile territory between the Severn and the Wye was subdued by Offa. The Britons bear testimony to victories untold by the Saxon chronicler; and the British harp yet resounds with the sweet and plaintive melody[b], which laments the slaughter of their ancestors, who fell beneath his glaive. The royal seat of the Princes of Powys, who, like their kinsmen in the north, asserted their descent from the Roman Maximus, was removed from Pengwern, now Shrewsbury, to the Halls of Mathraval. A rampart, extending from Chester to the Wye, became at once the boundary and defence of the conquests, and

Formation of the kingdom of Mercia, or the Marches.

(See below, pp. 386, 387.)

Offa; his victories over the Britons. Conquers the greater part of Powys; casts up a great fortification (Offa's Dyke, or *Clawdh Offa*) which separated his acquisitions from the British territories.

[a] *Mervin*, for instance.

[b] The well-known air of "*Morva Rhuddlan*." Caradoc, King of Gwynedd, was slain in this battle, fought about 792. (See Part II., *Proofs and Illustrations*, p. 486.)

Part I. Ch. XV.

the name of "Clawdh Offa," given to this fortification in common speech, by the Cymri at the present day, comes in aid of the evidence, almost contemporary, by which it is assigned to the Mercian king[a].

800–809–811. Egbert; his armies advance as far as Snowdon, he conquers the commot of Rhyvonioc in Denbigh, and ultimately reduces the whole of the country. (See above, p. 381.)

The attempts made by the Britons to deliver themselves from the empire of Egbert contributed to accelerate their subjugation. His armies advanced as far as the fastnesses of Snowdon. The Welsh chroniclers inform us that he possessed himself of an important territory in the vicinity[b], and the final reduction of Chester, the "City of Legions," which, at an early period, had been already occupied by the English, completely separated the Britons of Gwynedd from the Cumbrian realm[c].

Subjection of the British princes to the Anglo-Saxon kings. (See above, p. 380.) (See II., p. 565.)

The sovereigns of the Cymri continued to reign in Cambria; and, whatever irregularities may have taken place in the succession, the primeval families retained their sovereignty. Yet it cannot be asserted that the British princes were ever really independent of the Saxon crowns. That, in the days of Ethelbert, they were subjected to the Bretwalda, has been shewn. The terms employed by Bede, in speaking of the empires of Ethelfrith and of Edwin, imply the most absolute dominion; and though the latter lost his life in conflict with the Britons, the war arose from the "rebellion" of the stubborn Ceadwalla, who sought to restore the independence of his nation, but who ultimately succumbed to the power of the Saxon enemy. And Egbert, though they resisted bravely against his power, compelled the unwilling Britons of the north to submit to his supremacy.

809. Subjugation of the Britons of the North (i.e. of *Wales*), by Egbert. (See II., p. 344.)

During the reign of Egbert, an important alteration took place in the British government; the Cambrian kingdom was severed into the sovereignties of Gwynedd, Deheubarth, and Powys, in pursuance, as it is said, of the division made by Roderick the Great amongst his three sons, Anarawd, Cadel, and Mervyn, who respectively took these principalities. With the title of "*Brenyn Cymry Oll*," or King of all the Cymri, the first, Anarawd,

Roderick the Great, 843–876, divides the superiority of Cambria between his three sons.

[a] See Asser, as quoted in Part II., *Proofs and Illustrations*, p. 486, and Giraldus Cambrensis, de Illaudabilibus Walliæ, c. 7.

[b] The Commot of Rhyvonioc, in Denbigh. (Wynne, p. 24.)

[c] Egbert, according to Wynne's Caradoc (p. 26), laid siege to "Caer Lheon âr Dhyffrydwy," or Chester, which had *hitherto* remained in the hands of the Welsh; as I have before observed, Ethelfrith (Bede) seems to have occupied Chester in 613, yet the Britons probably recovered the city again.

whose royal seat was placed at Aberffraw, possessed the supremacy over his brethren, and to him the others were to render homage and fealty. The modern Welsh historians represent this transaction as an actual division of all the territory. In Deheubarth, or "Demetia," and Powys, however, the smaller "Reguli" continued to reign, and the real construction of Roderick's testament seems to be, that the superiority of Deheubarth and Powys was transferred by Roderick to his two younger sons, who, in their turn, were to consider the eldest as their common sovereign and liege lord. But the inferior princes were not displaced; and, to borrow the phraseology of the feudal law, such states as Brecheiniog or Gwent were "*arrière-fiefs*" of the British crown.

As we advance, the proofs of the subjection of the Cymric Princes are more clear and precise. That they became the "men" of Alfred is proved by unequivocal testimony. Asser, the Briton, the contemporary and the biographer of Alfred, speaking of the regions of "Deheubarth," which, according to the Celtic idiom, he designates as the "right-hand side of Britain,"[a] says, "they belong, and have long belonged, to Alfred"; Asser then enumerates the names of the Kings and Reguli who had sought Alfred's protection against their enemies, and purchased such aid by their vassalage. Anarawd, the son of Roderick, in the same manner, surrendered his independence and his kingdom, and promised entire homage and subjection to the Anglo-Saxon crown. Idwal, the son of Anarawd, renewing the obligation of his father, yielded to the supremacy and might of Edward, the son of Alfred. If any consistent principle prevailed, the submission of the "King of all the Cymri," the Ruler of Aberffraw, drew with it the fealty of those, who, in their turns, were dependent upon his authority, and Howel, the Prince of Powys, together with Clydawc, another prince of the adjoining country, were, accordingly, the obedient homagers of the Saxon sovereign.

British kings become the vassals of Alfred and Edward the Elder. (See II., pp. 356, 359–363.)

926. Athelstane causes the British kings to perform homage to him at Hereford. (See II., pp. 366, 367.)

Athelstane enforced his sway with as much energy and effect as his predecessors. Compelled to resort to Hereford, the British sovereigns complied with the terms imposed upon them as the punishment of that resistance, which the Saxons termed rebellion. They graced the triumph of Edgar on the Dee, they bowed as vassals before the throne of the "Basileus," and, in the last (See II., p. 399.)

[a] See Part II., *Proofs and Illustrations*, p. 443. "*Britannia*" is employed by Asser, not to denote the island in general, but the Welsh territory in particular, and in opposition to "*Saxonia*." (See Part II., *Proofs and Illustrations*, pp. 353 and 356.)

Part I. Ch. XV.

years of the reign of the last legitimate Anglo-Saxon king, the power of the liege lord placed his dependents upon the throne.

1063, 1064. Blethyn and Rhywallon appointed to be kings of the Welsh; become the vassals of Edward the Confessor. (See II., p. 425.)

From almost the earliest period that can be traced, such subjection was accompanied by the payment of tribute. It may, indeed, be inferred, that any prince who acknowledged the authority of a Bretwalda, contributed to supply his treasury; but with respect to the "Welsh" we possess decided evidence of this token of subjection. The tribute imposed by Egbert upon the "North Welsh"[a] is stated in general terms. Athelstane increased this ancient burden to an amount which had hitherto been unexampled. Twenty pounds weight of gold[b], and three hundred pounds of silver, were to be transmitted yearly into the "hoard" of the Anglo-Saxon king. Twenty-five thousand beeves were to be driven annually into his pastures. And, in addition to these stores of wealth, the King was gratified by the fleetest hounds and the keenest hawks which a nation of hunters could present to their superior.

Tributes rendered by the Welsh to Egbert and to Athelstane. (See II., pp. 345, 366.)

According to the laws of Hoel Dda, the tribute which the "King of Aberffraw" was bound to yield to the "King of London" was fixed at sixty-three pounds, to which the whole territory of Cambria was assessed. This, though smaller in amount than under Athelstane, was still a sufficient proof of dependence; and we may praise the candour of the Cymri, who have not attempted to deny the incontestable truth—a truth which neither disgraces them nor their descendants—that, compared with the English, they were the weaker community. The war begun by Edgar for the purpose of enforcing the payment of this tribute is said, by the Welsh, to have been terminated by his acceptance of three hundred wolves' heads, which, in the course of three years, entirely cleared the country of these noxious animals[c]. It is difficult to avoid the supposition, that such a payment partakes

Amount of tribute as stated in the Welsh authorities (see II., pp. 392, 427, and the text of the Laws of Hoel Dda, III. 2. § 1).

The tribute of wolves' heads.

[a] i.e. the inhabitants of modern Wales (see above, p. 339).

[b] According to Knighton (p. 2321), two hundred pounds of gold. This writer, though recent, and often fabulous, appears sometimes to have had authorities now lost.

[c] Ludvalo, Regi Wallensium, edictum imposuit, ut sibi quotannis tributum trecentorum luporum pensitaret, quod cum tribus annis fecisset, quarto destitit, nullum se ulterius posse invenire professus, Malm. lib. ii. c. 8, and Wynne's Caradoc, p. 51. [On Ludval, King of the Welsh, he imposed an edict, that he should pay him every year a tribute of 300 wolves' heads, and, when he had done this for three years, he ceased in the fourth, saying that he could find no more.]

more of the character of popular tradition than of historical fact. The English chroniclers represent the command as a newly invented tax, an additional burden, and not a commutation. And, in fact, whether the tale of Edgar be true or not, the promise of rendering the "ancient and accustomed tribute" due to the English kings, was repeated by the Welsh princes, in the very last years of the Anglo-Saxon monarchy.

1064. Promise of the Welsh princes to pay the accustomed tribute. (See II., pp. 426–428.)

A sum, equal in amount to one year's tribute, was exacted when the "King of Aberffraw" received possession or seisin of his kingdom from the hands of his superior; according to legal phraseology, we may fairly describe this as a relief[a]; in the Cymric law it is denominated the payment made by the vassal or tributary prince, and the same payment which the King of Aberffraw thus rendered to the Sovereign of Britain, was demanded by him, from the princes amongst whom the Cambrian kingdom was divided.

The obligation of an "Under-King" of the Welsh was confirmed by the usual oath of fealty. He would be faithful in all things to his superior, truly and without deceit; and aid or co-operation was to be rendered by sea and land. It is probable that the obligation of military service was not often enforced. Secret treachery is more perilous than open enmity, and the "King of London" might very willingly dispense with the military services of a nation, whose inborn hatred towards the Saxon was not to be quenched by treaties, or restrained by words or forms. Yet, on one important occasion, we know that Llewellyn fought in the ranks of Edmund, his lord and sovereign; and the conquest of the Cumbrian Britons was effected by the aid of the Demetian king.

"Under-Kings" of the Welsh take the oaths of fealty, and engage to "aid" their Anglo-Saxon superior, i.e. to perform military service. (See II., pp. 425–428.)

Military service. Llewellyn, King of Demetia, performs military service in the host of Edmund, whom he assists against the Cumbrian Britons. (See above, p. 369, and II., p. 379.)

The Cymric "Under-Kings," as the vassals of the "Defender" Cymric or Welsh Reguli

[a] *Mechdeyrn ddyled*, i.e. the *dyled*, the obligation or duty of the Mechdeyrn, or Mactiern (see above, p. 346). Dr. Owen Pughe explains it as the *tribute* due from an inferior prince to his sovereign. "Thus, ac- "cording to the ancient constitution of Britain, we find, in a particular "period, that the Kings of Scotland, Wales and Cornwall, paid such "a tribute to the Crown of London; and they claimed the like homage "from their respective tributaries." But Wotton, with more precision, considers it as the *relief* or *single* payment, made upon obtaining seisin. Summa pecuniæ summo Regi solvenda, ab illo cui provinciam tradiderit, Leges Wallicæ, p. 578. [A sum of money to be paid to the chief king, by him to whom he had delivered the province.]

Part I. Ch. XV.

of the Britons, the "Superior" of the British sceptres, performed suit and service in the supreme assemblies of the English legislature. In the capacity of vassals, we find them sitting amongst the other peers of the empire; yet, in one instance, we observe a Witenagemot convened by Athelstane, and attended by no other laymen, except the British Subreguli, a circumstance which may induce the supposition, that, on some occasions, the temporal legislature, if assembled by the Sovereign in his character of the "Ruler of the Britons," might be composed merely of the subordinate chieftains of the Cymric tribes.

attend the Witenagemots of the Basileus. (See II., pp. 372, 386.)

Athelstane holds a convention or Witenagemot attended by no other laymen except the British Subreguli. (See II., p. 375.)

The vassals who thus appeared at the court of the Anglo-Saxon sovereign were liable to the jurisdiction of the tribunal. If a contest arose between them, concerning the right to the territories which they held, the dispute was decided by the judgment of the Witan of the King of Britain, and thus the "Full council" of Edward, King of all Britain, upon the demand of right made before them by Morgan, the Prince of Brecknock, compelled Howel the Good, the legislator of his own people, to surrender the lands which he had usurped contrary to law and justice.

Jurisdiction of the court of the English Kings over the British princes. Hoel Dda compelled to restore the commots of Ystradwy and Ewias to Morgan Hên, by the judgment of the court of Edward the Elder. (See II., pp. 363–365.)

The Triads[a] accuse the treacherous Lloegrians, who are said to have confederated with the enemy; and in the earlier ages of the Anglo-Saxon conquests it is very probable, as is affirmed by these traditionary memorials, that the British population who continued to dwell beneath the enemy's sway acquired the language and manners of the prevailing race. In the latter periods, the Lloegrian Britons appear to have existed, either as distinct communities, intermixed in townships amongst the victors, or, as a distinct people in larger territories, divided from the tracts inhabited by their Saxon lords; and, in all cases, they were probably much more numerous than is usually supposed. Upon the inference to be drawn from the proportion of words common to the Anglo-Saxon and Cymric languages, I will not rely. At least one third of the roots of our English vocabulary may be found in the Welsh; but this agreement may have resulted from the earlier intermixture of the Belgic tribes; or it may be merely one of the vestiges, always becoming clearer as we ascend in history, of the primeval unity of the races of mankind. But we can produce other indications of the density of the British population. In the reign of Cenred, the hermit of Croyland might

Britons of Lloegria amalgamate with the Saxons.

Proofs of the density of British population.

[a] Probert's Translation, p. 376.

expect to be disturbed by the invasions of the Britons[a]; and East Anglia, during the eleventh century, was still liable to the "infestation" of the "British thieves,"[b] the rancorous phrase by which the Anglo-Saxon monk probably designates the tribes who were striving to regain their ancient freedom. So little, indeed, did the conquests of the Mercians displace the Cymric people, that Hereford, as late as the reign of Henry II., was popularly considered to be in Wales[c]. The name of the "Wealhcynn," as applied to the western shires, plainly indicates the character of the prevailing population; and we can easily understand the state of these march-lands and border countries, by considering that they were circumstanced like "Gwent," or Monmouthshire, at the present day. The body of the people are Cymri, retaining their language and their customs; but the nobility and the gentry, and the magistracy and the priesthood, are almost wholly of English lineage, and use the English tongue. Such a country has a double aspect, it is *English*, if viewed in its political relations, and considered with respect to the ruling or influential classes of society, *British*, if viewed in relation to the main character of its population. By adverting to this circumstance, many apparent historical inconsistencies may be explained. If you consider the governments, the people disappear; if the people, the governments disappear. A country inhabited by Picts and Scots, might be described by the historian as part of England[d]; and we may be reconciled to the supposition, that many a district which, in the general course of history, passes for an

East Anglia infested by British or Welsh marauders as late as the reign of Canute.

Hereford considered to be in Wales.

The Western shires, or Wealhcynn, i.e. Somerset, Dorset, Devon, &c. (See above, p. 341); state of their population.

[a] This appears from an incident in the Life of St. Guthlac (Acta Sanct. Aprilis ii. p. 43): his cell was surrounded at night by a crowd of enemies, and from their rough and guttural speech, he imagined them to be the Britons, by whom the country was so much harassed (Part II., *Proofs and Illustrations*, p. 482). To Guthlac's great satisfaction, they proved to be *only* Devils, and *not* Welshmen; but it is evident, that the writer of the legend would not have described his hero as supposing his assailants to be Welshmen, unless the incursions of the Cymri were matters of ordinary occurrence.

[b] Hist. Ramesiensis, p. 444. In the regulations of the *Thegna gild* of *Cambridge*, probably of the reign of Ethelred, provision is made for the payment of the fine incurred by the slaughter of a *Welsh* churl. (Hickes, Diss. Epist., p. 21.)

[c] Scutage Roll, *temp.* Hen. II. (Hargrave MS., no. 313, p. 116)

[d] Galloway (see above, p. 138.)

Part I. Ch. XV.

integral portion of an Anglo-Saxon realm, was still the dwelling-place of the primeval population of Britain.

When the "Wealh" were few in number, they may have been dispersed amongst their rulers: but the more numerous masses of Cymric population lived apart from the Saxon colonies. When we are told that the Britons and the Saxons divided Exeter between them, we are not to suppose that they lived in the same street, and that a Saxon townsman kept house by the side of a Cymric neighbour. Judging from invariable analogy, we cannot doubt but that the two races were severed from each other; each forming a distinct community, an English town and a Welsh town, English Exeter and Welsh Exeter; just as the Celtic population of the "Irish town" of Kilkenny constituted a corporation distinct from the "Sassenach" intruders[a]; and, to return to England, in many of the townships of the Welsh Marches, analogous divisions continued almost within time of memory[b].

British population of Exeter. (See above, pp. 341–342.)

The Cymric or Welsh inhabitants of "Deunan," probably of that part of Devon which lies beyond the Exe, enjoyed a considerable share of independence; and the compact between the "Witan" of the "Angle-cynn," and the "Rædboran" of the Welsh, was effected upon terms of reciprocal equality. Individuals of either race were prohibited from entering into the territory of the other, except under such warranty as insured the peaceful departure of the stranger. The legal rights of the two communities were strictly guarded; and disputes arising between the plaintiffs and defendants of the two nations were to be decided by a court of twelve "Lawmen," six English and six Welsh, the representatives of the respective communities[c]. And it may be observed, that the principle which suggested this dimidiated tribunal, was generally adopted in our border law.

The compact between the English and Welsh *Deunsetas*[1], or inhabitants of Devon.

The tenour of the compact fully implies, that the Welsh were subject to the dominion of the crown of Wessex. They were bound to render tribute; and hostages also, when hostages were

[a] See Ledwich, Antiquities of Ireland.

[b] Thus the lordship of Talgarth, like many others under the Lords Marchers, was divided into English and Welsh, each division had a Court each for the respective nation. (Jones, History of Brecknock, vol. i. p. 124.) This example arose later than the Saxon times, but the principle is one of universal application.

[c] See Part II., *Proofs and Illustrations*, pp. 330, 446, 447, and Wilkins, p. 125.

required. It is probable that they retained many of their old laws and customs and tenures. But they had now no Ruler of their own, and they are directed to observe the enactments of Edgar, in the same manner as the English; whilst the Danes and East Anglians receive the law through the medium of the Earls, the chieftains of their communities. They had, therefore, no political existence apart from the general government of "Saxonia"; and the "Wealh Gerefa" was most probably the officer, by whom the King's dues were collected, and his commands enforced, amongst the dependents of his crown.

(See II., p. 408.)

The Wealh Gerefa (see II., p. 445), the officer by whom the king's dues were collected from the Britons.

All these facts will afford much matter for reflection, and convince us of the great difficulty of penetrating into the real history of nations. Read the chroniclers, and it will appear as if the Britons had been entirely overwhelmed by the influx of Teutonic population: and it is only by painful and minute inquiry, that we ascertain the existence of the subjugated races, concealed amidst the invaders.

CHAPTER XVI.

Scots and Picts—subdued by the Angles—Dominion of the Northumbrian Bretwaldas, Edwin, Oswald and Oswio—Pictish succession deduced through the female line—probable origin of this custom—Picts attempt to throw off the authority of Ecgfrid—are reduced by him—retrocession of the English power upon the death of Ecgfrid—Eadbert subdues the Picts and Scots—Kenneth Mac Alpin becomes King of both nations—the Picts are gradually extinguished and absorbed amongst the Scots—Edward the Elder—extent of his Empire—the Scots accept him as their "Father and Lord"—Athelstane—Constantine, King of the Scots, performs homage to him—attempts to throw off his allegiance—compelled to submit—Battle of Brunnaburgh—grant of Cumbria to Malcolm—Oath of Fealty exacted by Edred—Transactions between Edgar and Kenneth—the latter obtains investiture of Lothian, to be held by Homage, Suit of Court, &c.—Kenneth attends the Witenagemot of Edgar—Kenneth repeats his homage to Edgar at Chester, together with the other Subreguli or Vassals of the Anglo-Saxon Crown—Canute enforces the Scottish homage—Malcolm Canmore restored to the Crown of Scotland by the aid and command of Edward the Confessor—Progress of the Scoto-Saxon Kingdom.

The Saxons, the allies of the Picts and Scots, when these nations invaded the South of Britain, A.D. 367, 430. (See above, pp. 319, 320, 322.)

Picts, Britons who had not become Romanized. (See above, pp. 349, 350.)

During the calamitous period when Britain was falling away from the Empire, the Saxons appear as the assailants of the Romans and Romanized population, in conjunction with the dreaded Picts and Scots of the north. A union so formed, cannot, however, be considered as a national compact. It was a temporary confederacy between the chieftains of ferocious tribes eager for rapine; and dissolved when the chance of plunder had ended. The alliance did not, in the slightest degree, restrain the Jutes from afterwards opposing an impenetrable obstacle to the savage inroads which had been so recently facilitated by their kinsmen. Of the warfare which took place between the Angles and the Picts, no memorials are preserved. But the rude valour of the uncivilized Britons was as little able to resist the invaders,

as the military skill of their more cultivated brethren who dwelt in Cumbria and Strath Clyde; they, also, yielded to the "Dragons" of Germany.

617–670. Picts and Scots subjected to Edwin, Oswald and Oswio, the Northumbrian Bretwaldas. (See II., pp. 565, 569.)

The Scots, who at this period were wholly confined to the districts on the western coast, shared the same destiny, and these nations, like the other predominant "languages" or races of Britain, became the tributaries of Edwin, of Oswald and of Oswio, the Bretwaldas of Northumbria.

Pictish succession, deduced through the mother, not through the father.

According to the singular policy of the Picts, the hereditary right of their monarchs was deduced through the female line. On each demise, a member of the royal family was selected as the king, but the sovereign claimed the throne by the "spindle side," and presented himself to the nation as his mother's heir. Hence, in the chronicles of the Pictish kings, we can seldom or never discover the son as the successor of his father, except towards the conclusion of their history[a]. The origin of this custom, so little agreeable to the ideas and feelings of mankind, must, as I have before observed, be probably sought in the community of families which prevailed amongst the Britons. The British matron gloried in her plurality of husbands[b], and, in such a household, maternal ancestry could alone be claimed with any degree of certainty by the child. This licentiousness left deep and unpleasing traces in the national character; and many vestiges of this depravity may be afterwards discerned. There was no other Christian nation in which the marriage-tie was so loose as amongst the Cymri. Consult Hoel Dda for the rights of woman[c]. and you will find that the chapter opens with

(See above, p. 261.)

Facility of divorce amongst the Britons of Wales.

[a] See Pinkerton, vol. i. pp. 260, 265, who, allowing for his attempts to *Gothicize* the Picts, has treated this portion of their policy with much ability. The custom which prevailed amongst the Scots, both in Albania and Hibernia, of designating the individual as the son of his mother, may be traced to the same feeling. (See Ritson, vol. ii. p. 215.)

[b] Dio, lib. lxxvi. c. 9–16.

[c] Or the chapter entitled "Cyfreithjea y Gwragedd." The first fourteen sections (according to Wotton's edition) relate to the division of the property upon the dissolution of the co-partnership. The directions are very minute, often very whimsical. If there was only one cat, it belonged to the husband, but all the others (if more than one) to the wife. The husband took all the hens. All the cheese fit for use belonged to the wife. The whole affords a curious picture of primitive housekeeping.

Part I. Ch. XVI.

a specification of her rights in case of divorce. The female was literally bought of her relations, and marriages seldom or never took place until the intended husband had become fully secure of progeny[a]. The Scots and Attacotti were condemned to a promiscuous intercourse which St. Jerome ennobles by viewing it as an imitation of the Utopian republic of the Grecian sage[b]. In the Picto-Scottish kingdom or province of Galloway scarcely any sexual restraint was imposed upon the people, even after the introduction of Christianity[c]. I do not wish to impugn the character of the more recent of the British princesses. But the Picts retained their canon of inheritance, after the original reason of its adoption became a matter of less frequent occurrence than in the elder day. Alliances with other nations, which we cannot positively affirm to have been matrimonial, were permitted, perhaps encouraged. Ethelfrith having been defeated and killed by Edwin of Deira, his son Eanfrid took refuge amongst the Scots and Picts. Amidst these nations did he and his brethren, and the many noble youths who accompanied the princes in their flight, reside, so long as Edwin continued to occupy the throne of Deira[d]. During this exile, Eanfrid became the father of Talorgan, afterwards king of the Picts. Talorgan was, therefore,

Eanfrid, the son of Ethelfrith, takes refuge amongst the Scots and Picts. Becomes the father of Talorgan, King of the Picts. (See II., p. 626.)

[a] Matrimoniorum autem onera, nisi expertis antea cohabitatione, commixtione, morum qualitate, et præcipue fœcunditate, subire non solent, Cambrensis, de Illaudabilibus Walliæ, p. 450. [But they are not accustomed to undergo the burdens of matrimony, unless beforehand they have tested their cohabitation, their intercourse, the quality of their manners, and especially their fecundity.]

[b] Ep. 83.

[c] Vita Sancti Alredi (the Abbot of Rievaulx), Capgrave, 12.

[d] Tempore toto quo regnavit *Æduin*, filii præfati Regis *Ædilfridi*, qui ante illum regnaverat, cum magna nobilium juventute apud Scottos *sive* Pictos, exulabant. Qui ut, mortuo Rege inimico, patriam sunt redire permissi, accepit primus eorum, quem diximus, *Eanfrid*, regnum *Berniciorum*, Bede, lib. iii. c. 1. [The whole time that *Edwin* reigned, the sons of the aforesaid King *Ethelfrith*, who had reigned before him, were exiled among the Scots *or* Picts, with a great number of the youth of the nobility. Upon the death of the king, their enemy, they were permitted to return to their native country, and *Eanfrid*, the eldest of them, whom we have mentioned above, obtained the kingdom of the *Bernicians*.] Bede did not confound the Picts with the Scots, but they were so intermixed, that the *mass* of people might be called by either name.

the nephew of Oswio; and it cannot be doubted, but that the relationship between the Picts and the Angles must have strengthened the authority of the Bretwalda. Other similar intermixtures with the Britons can be surmised.

(See above, p. 391.)

We may speculate correctly upon the connexion between national morals and national prosperity, and the easy subjection of the early Celtic tribes may be traced to the degradation produced by such a state of society. The nation lost its coherence, and if, as is most probable, the vices of the Gallovingians prevailed to as great an extent amongst the Picts, their depravity would assist in breaking up the nation, and in preparing the way for the final extinction of their race and name.

670. Picts rebel against Ecgfrid (see above, p. 364.)

In the reign of Ecgfrid, the Picts, impatient of the Anglian superiority, made a great effort to withdraw themselves from the dominion of the Northumbrian king; but Ecgfrid led his army against them; the rivers were filled with the dead; and we are told, that the servitude, under which the Picts were now placed, continued until his demise[a]. Ecgfrid's death was occasioned by a rash invasion of the Pictish country. Advancing into "Pictland," he was defeated by the wily prudence of his enemies. They retreated before him until they had entangled him in the mountain passes of Drum-Alban, and he fell in the conflict. The Picts recovered a portion of their territory which had been occupied by the Angles and the Scots[b]. The Bishop of the Picts, appointed by the authority of the Prelate of Canterbury, retired with his monks of the monastery of Abercorn, in the "vicinity of "the firth which divides the Picts from the Angles," and Alfred[c],

Retrocession of the power of the Angles after the death of Ecgfrid.

[a] See Part II., *Proofs and Illustrations*, p. 571.

[b] See Part II., *Proofs and Illustrations*, pp. 573, 626.

[c] Bede, lib. iv. c. 26. Ex quo tempore spes cœpit et virtus regni *Anglorum* fluere ac retro sublapsa referri. Nam et *Picti* terram possessionis suæ quam tenuerunt *Angli*; et *Scotti* qui erant in *Brittannia*; *Brittonum* quoque pars nonnulla libertatem receperunt; quam et hactenus habent per annos circiter quadraginta sex; ubi inter plurimos gentis *Anglorum* vel interemptos gladio, vel servitio addictos, vel de terra *Pictorum* fuga lapsos, etiam reverentissimus vir Domini *Trumuini*, qui in eos episcopatum acceperat, recessit cum suis, *qui erant in monasterio Aebbercurnig, posito quidem in regione Anglorum, sed in vicinia freti, quod Anglorum terras Pictorumque disterminat.* [From that time the hopes and strength of the *English* crown began to fluctuate and to retrograde. For the *Picts* recovered their own lands which had been held by the *Angles* and the *Scots* that were in *Britain*; and some of the

Part I. Ch. XVI.

the brother of Egfrid, succeeded to a diminished, and, as it was considered, an inglorious empire[a].

757–758. Picts and Scots, subjects of Eadbert. (See above, p. 365.)

Eadbert was enabled to raise again the standard of Northumbria. The Scots and Picts obeyed him as their Lord: and the latter as the allies, or rather the subjects, of the Northumbrians, assisted him in reducing the British kingdom of Strath Clyde or Cumbria; whose capital, Alcluid, yielded to the united forces of Unnust and Eadbert: and, as has been before noticed, it is doubtful whether the Britons did not, for a time, become subjected or united to the Pictish kingdom. Eocha, King of the Scots, became the husband of the Pictish Princess, Urgusia, and her rights devolved upon her son, Alpin[b]. Whether a nearer heir existed; or whether a more powerful competitor occupied the throne, the right of Alpin was not acknowledged by his mother's people: and his defeat and death in Galloway transferred the empire of the Scots to the Pictish nation. But the fatal term of the Picts was approaching; a speedy alteration of fortune was at hand; Kenneth, the son of Alpin, leading forth the Scots from Argyle, established himself as Monarch of both nations, and obtained an authority which he transmitted to his descendants. An expression[c] implying a total defeat of the Picts

(See above, p. 367.) Eocha, King of the Scots, married to Urgusia, a Pictish princess by whom he has Alpin.

Kenneth, son of Alpin, subdues the Picts, who are united to the Scots.

Britons recovered their liberty, which they have now enjoyed for about forty-six years. Among the many *Angles* who then either fell by the sword or were made slaves, or escaped by flight out of the country of the *Picts*, that most reverend man of God, *Trumwine*, who had been made bishop among them, withdrew with his people *who were in the monastery of Abercorn, which, indeed, is situate in the country of the Angles, but close by the strait which divides the lands of the Angles and those of the Picts.*] This very important passage leaves no doubt as to the boundary of the Pictish territory. For the appointment of Trumwine, see Bede, lib. iv. c. 12.

[a] Will. Malm., lib. i. p. 21.

[b] This opinion, maintained by Chalmers, vol. i. p. 332, seems to have been generally preferred by the Scottish antiquaries. Pinkerton (vol. ii. p. 133), however, suspects or supposes that Alpin was the son of Eogannan or Uwen, King of the Picts.

[c] It occurs in the Pictish chronicle, Pictavia autem a *Pictis* est nominata, quos ut diximus, *Kinadius* delevit. [Pictavia, however, receives its name from the *Picts*, whom, as we have said, *Kenneth* destroyed.] The other scanty authorities indicate an occupation of the Pictish territory. He reigned, "expulsis *Pictis*," Chron. Eleg. Hic mira calliditate duxit *Scotos* de *Argadia* in terram *Pictorum*,

Erroneous opinion of the total extirpation of the Picts. (See above, pp. 348, 349.)

has been interpreted to signify destruction; and the annalists of a credulous age afterwards fabled that the entire people had been utterly rooted out and extirpated by the ferocious conqueror. The improbability of the tale would be a sufficient refutation of the story, even if better evidence had not been preserved of the existence of the Picts as late as the twelfth century[a]. But so little had they suffered by the change, that, in the eyes of their neighbours, they continued to rank as a distinct monarchy; and, in the annals of Erin[b], the title of King of the Picts is ascribed to Kenneth and his successors. Yet they certainly wasted away as a nation, and when we recollect how closely the Picts and the Scots were intermingled from the very first beginning of their history, there is little difficulty in comprehending that the suppression of the separate governments of the vanquished tribes, would ultimately cause them to be absorbed amongst their conquerors.

The Danes or Northmen had now occupied Deira and Bernicia, and, extending their devastations far beyond the Forth, they wasted "Pictland." Colonies of Scandinavians had been

Nomina Regum. [He with wonderful cleverness led the *Scots* out of *Argyll* into the land of the *Picts*.]

[a] See above, p. 348, note b.

[b] See, for instance, the Annals of Ulster, which, in addition to the following passages, afford other evidence of the continuance of the Picts as a nation.

857. *Cinaeth Mac Ailpin*, Rex *Pictorum*, *Adulf*, Rex *Saxoan*, mortui sunt. [857. There died *Kenneth Mac Alpin*, King of the *Picts*, and *Æthelwulf*, King of the *Saxons*.]

870. *Amlaf* et *Imhar* venerunt redeuntes *Dublinium* ex *Albania*, ducentis navibus, et præda maxima hominum *Anglorum*, et *Britonum*, et *Pictorum* deducta est secum ad *Hiberniam* in captivitatem. [870. *Anlaf* and *Imhair* returned from *Alba* to *Dublin* with two hundred ships, and a very large booty of *English* and *British* and *Picts* was brought back into captivity with them to *Ireland*.]

874. Congressio *Pictorum* contra nigros alienigenas, et strages magna *Pictorum* facta est. [874. An encounter of the *Picts* with the black foreigners, and a great slaughter of the *Picts* took place.]

876. *Constantin Mac Cinaeda*, Rex *Pictorum*, mortuus est. [876. *Constantin, son of Kenneth*, King of the *Picts*, died.]

877. *Aedh Mac Cinadan*, Rex *Pictorum*, a sociis suis interfectus est. [877. *Aedh, son of Kenneth*, King of the *Picts*, was slain by his companions.]

Part I. Ch. XVI.

established in Caithness and Sutherland; and, perhaps, these Gothic invasions contributed to the downfall of the Pictish state. But unsparing as the hostilities of the pirates may have been, the universal feeling of enmity towards the Anglo-Saxons contributed to reconcile the Scandinavians and the Gael. Their rulers intermarried. The Danish chieftains of York were at once the kinsmen of the Scottish sovereigns and of the British kings of Strath Clyde[a]: so that all the people of the north were coalescing into one family.

Period during which the superiority of the Anglo-Saxons over the Scots was suspended.

We have seen that the dominion of the Northumbrian Bretwaldas comprised all the nations and languages of Britain. Eadbert possessed the same authority over the Scots as his predecessors; but when the Anglo-Saxons were struggling for their very existence against the Danes, could their supremacy be maintained? Alfred, if he did not abandon the pretensions of his predecessors to the sovereignty of the island, may have been unable to assert his full rights: and during his reign, no transactions, either of hostility or friendship, are recorded to have taken place between him and the monarchs of the Scots in Britain. After the renovation of the kingdom of Wessex, Alfred's son was more ambitious or more successful. Edward, without gaining the direct and absolute sovereignty of the territory inhabited by the Scottish tribes, reduced them to dependency. Like the Britons of Strath Clyde, the Scots—king and people—commended themselves to the "invincible Edward," accepting him as their sovereign, their lord, and their father, and the homage which they performed to the king of Wessex rendered them the liege-men of his crown[b]. The Scots renewed this compact with his successor, and Constantine was "ruled" by Athelstane, even as the other Kings of this island. But Athelstane's title was dubious. Born of an ignoble mother, his right had been disputed: a competitor had challenged the succession: Athelstane's wisdom might be famed, but his prowess was as yet untried, and all the kings and races who dwelt in Albania and the north—Britons and Danes—the Cymri and the Gael—united in attempting to cast off his authority. Raising all his forces, Athelstane attacked Constantine with a mighty army. By land he wasted the country as far as "Dunfoder" and "Wertermere."[c] His fleet sailed to

Edward the Elder, Lord and Superior of the Scots.

924. The King of the Scots accepts him as his "Father and Lord."

Athelstane, Superior of the Scots, whose King, Constantine, is "ruled" by him. (See II., p. 366.)

Confederacy of the nations of the North against Athelstane.

934. Constantine defeated by Athelstane.

[a] See above, p. 369. [b] See Part II., *Proofs*, pp. 358, 626.

[c] Places unknown[1], perhaps Wertermere should be Westermere, the Western Sea, or Frith of Clyde. (Pinkerton.)

the shores of Caithness. The territories peopled by the Scots and Picts were occupied by the English; and, if Athelstane's ambition had been equal to his power, he might have annexed the whole country to the dominions which he ruled. But the victor deemed it more glorious to respect a fallen monarch, than to occupy his throne. The desolated territory was restored to the Scottish King. For insuring the engagements of Constantine, his son accompanied Athelstane to Wessex as a hostage; gifts and tribute conciliated the conqueror or his counsellors; Constantine, the vassal or "subregulus" of Athelstane, resorted to his court; and the Scot, as a faithful liegeman of the empire, assented to the acts and legislation of the monarch of all Britain[a]. Scarcely had the compact been completed, when the Scots rose against the Saxon king: but their "rebellion" only increased his triumph; and the great battle of Brunnaburgh reduced them again into subjection.

Submission of Constantine to Athelstane. Constantine attends the Court of Athelstane as a Subregulus.

937, 938. Battle of Brunnaburgh. (See above, p. 369.)

The bond which compelled the Scots to acknowledge the supremacy of the "Basileus" of Britain, insured his protection; and it is probable that the connexion thus formed was the cause which induced Edmund, when he had conquered the Cumbrian kingdom, to grant the territory to Malcolm, a successor of Constantine, upon condition of military "co-operation" or service. The oath of fidelity was again renewed by Malcolm[b] to Edred. It may be contended that this engagement was merely contracted in respect of Cumbria. Malcolm, as it is said, invaded "Anglia" as far as the Tees[c], and such predatory incursions may be viewed as acts of hostility against the English crown, inconsistent with allegiance. But these districts were frequently held by Danish chieftains; and the Angles of Northumbria were constantly rising against the line of Cerdic. We can point out the country against which Malcolm directed his attacks, but we know not the parties whom he assisted, and we cannot decide whether these forays should be described as struggles *against* the paramount King of Wessex, or diversions in *favour* of his authority. Whoever might be the sufferer, "Saxony"—as Bernicia was called by

945. Cumbria granted by Edmund to Malcolm of Scotland, to be held upon condition of military service. (See above, p. 369.)

946. Oath of fealty from the Scots exacted by Edred.

[a] See Part II., *Proofs and Illustrations*, pp. 366 et seq.

[b] See Part II., *Proofs and Illustrations*, pp. 384 and 627.

[c] Prædavit *Anglicos* ad amnem *Thesis*, Chron. Pict. [He raided the *Anglic territory* as far as the river *Tees*.] The chronicle adds, some say that Constantine, who had resigned the crown, asked for a week's foray. The whole story is of little importance, and it is only noticed in order to answer the difficulty which it may suggest.

Part I. Ch. XVI.

953–961. the Gael—continued exposed to the incessant ravages of the Scots; the reign of Indulf was signalized by the acquisition of Edinburgh, the city of Edwin, which, abandoned by the Saxons, was occupied by the Scots, and ever afterwards separated from

971. the direct dominion of England[a]; and Kenneth possessed some real or supposed claim to Lothian[1], or the northernmost portion of the English territory. The tie of feudal allegiance, when the system was fully matured, could not always deter a vassal from entering the field against his lord, and therefore we need not doubt the dependence of Kenneth upon the Saxon crown, because we find him engaged in a war against the chieftains of Northumbria. Kenneth was endued with great military prowess, and the success which enabled him to carry off a "*Saxon*" prince, perhaps the son of one of the Dano-Saxon earls, rewarded his intrepidity[b]. But the force which sufficed to desolate, was inadequate to insure possession of the country; and the fame of Edgar's generosity induced Kenneth to seek the protection and favour of the English king. Kenneth repaired to the presence of Edgar. According to the king's command, he was honourably escorted to London, by Alfsi, the bishop, and by Oswulf and Eadulf, the earls of Northumbria[c]. Edgar received his visitor with hospitality and honour. Kenneth now preferred a claim to Lothian. He prayed that the territory might be restored to him: for the kings of the Scots, as he asserted, were entitled to the same by hereditary right. This pretension has been considered by some writers, as founded upon an hypothetical occupation of the province by the Picts. But from the testimony of Bede we are assured that the Firth was the boundary which divided the English from the Pictish territory.

971. Lothian granted to Kenneth by Edgar, to be held by Homage, Suit of Court, &c. (See II., pp. 398, 399.)

(See above, p. 394, note c to p. 393.)

Edinburgh, as before mentioned, had been in the possession of the Scots since the reign of Indulf, who probably owed the acquisition to the depopulation effected by the Northmen. A further part of the Lowlands may have been gained at the same time by the Scots when they occupied the Burgh, and afterwards lost in the wars with the Danish rulers of Northumbria. But the source of this obscure claim is of little importance, since the main historical fact is sufficiently disclosed. Kenneth petitioned

[a] See Part II., *Proofs and Illustrations*, p. 627. [b] Chron. Pict.

[c] For the manner in which an equivalent escort or array was secured to Malcolm's successor, William, see the charter of Richard I., Part II., *Proofs and Illustrations*, p. 656.

for the Benefice of Lothian, not for the absolute dominion; his inchoate right was to be sanctioned and recognized by the English king, to whom homage was due for the same. The difficulty of defending a distant province, separated from Wessex by the turbulent and disaffected territories of Danish Northumbria, facilitated the granting of the request: and Kenneth, by the advice of the "Proceres" of Edgar's Court, the proper judges in such a cause, obtained an investiture of Lothian and the Carse[1], the *Saxonia* of the Pictish chronicle[a]. But this cession was guarded by conditions which satisfied the dignity of the English crown, and protected the inhabitants who passed under a new master. Homage, as of old, was to be performed to Edgar by the vassal, suit and service, rendered to the court of the superior, and Kenneth engaged that the Saxon people should retain their ancient customs and language; a stipulation of which the observance was probably insured quite as much by the density of the population, as by the convention between the contracting parties. The munificence of Edgar was engrafted upon his policy. The several manors assigned to the Scottish king[b] would enable him to perform his long journey to the south with greater ease, whilst the *farm* or produce of the domains, the beeves, the sheep, the ale which they afforded, might not be entirely unacceptable to the monarch and his train.

Conditions upon which Kenneth received investiture of Lothian, Homage, &c.

Manors granted by Edgar to the Scottish King.

Kenneth, the homager of Edgar, was one of the Proceres of the English crown: and, in this capacity, the King of the Scots, or of Albania, attended the great Council at London, when Oslac, the Earl of Northumbria, and Ethelwine, the Ealdorman of East Anglia, aided the Emperor of Britain with their advice, and graced his palace by their service[c]. The ancient compact

971. Kenneth, by the style of *Rex Scotorum*, or *Rex Albaniæ*, attends the Witenagemot of Edgar.

[a] See Part II., *Proofs and Illustrations*, p. 614.

[b] See more particularly Flores Hist. (see Part II., *Proofs and Illustrations*, p. 406): these "mansiones in itinere plurimæ" [very many mansions on the road] are evidently the "duodecim villæ" [twelve townships] restored by Rufus to Malcolm Canmore when he performed homage (see Part II., *Proofs and Illustrations*, p. 634), and renewed the compacts which bound his predecessors.

[c] See Part II., *Proofs and Illustrations*, pp. 394, 396, 409. Nothing but the force of inveterate prepossession could have induced the acute and honest Chalmers to doubt the authenticity of this "paper," as he terms the charter of Edgar. The declamatory style exciting his scepticism is the ordinary language of the reign. He further objects, that "Oswald, Bishop of York, is made to sign it in 971, though he came not to the

Part I. Ch. XVI.

974. Kenneth repeats his homage to Edgar at Chester, with the other Vassals of the English Crown.

was renewed when Edgar assembled the subreguli of the empire at Chester, to grace his triumph on the Dee. Kenneth appears as the first of the train of vassal kings. He is followed by his nephew, Malcolm of Cumbria, and Maccus, the pirate king of Mona and the Isles; by the princes of Galloway, and of the Cymric tribes. They then took the oath of fealty, and entered into the obligation of military service, or of being the *co-operators* of their lord by sea and land: on the following morn, the eight vassals plied the oar, whilst Edgar steered the bark, upon the waters of the Dee[a]; and though the homage may have been more specially rendered by Kenneth for Lothian, yet the dependence of the *Ceancinnith* upon Edgar, extended the superiority of the Basileus over the whole race, whose chieftain bent before his throne[b].

Kenneth, by the foregoing transactions, becomes Lord or Earl of Lothian. Further cession or confirmation made by Eadulf Cudel, Earl of Northumbria. 1020.

By virtue of these transactions with Edgar, Kenneth became the undisputed lord or earl of Lothian, now permanently dismembered from the rest of Bernicia. A further grant of territory is said to have been made to his son Malcolm, by Eadulf, the cowardly earl of Northumbria[c1]. But this cession possibly related to a border country, perhaps a portion of the Merse[2], or some other districts of the Lowlands not included in the Lothian granted by the Anglo-Saxon sovereign; or it may have referred to some right or claim which the earl asserted over the dismemberment of the earldom, notwithstanding the investiture thus made by the king.

1033. Canute subdues the Scots. Malcolm and the other Scottish Kings perform homage to him.

[d] The rebellion of the Scots, as it is termed, and which drew down upon them the vengeance of Canute, was speedily followed by the submission of Malcolm, and of two other kings, who are described by the obscure, and perhaps corrupted, appellations of

see until 972." Surely this acute critic might have pardoned the loss of an iota, even if the constant variations as to the mode of reckoning the current year, did not excuse the discrepancy.

[a] See Part II., *Proofs and Illustrations*, p. 399.

[b] According to Flores Hist. the grant of Lothian was made after the homage at Chester; in this case Kenneth performed homage absolutely as King of the Scots.

[c] See Part II., *Proofs and Illustrations*, p. 627.

[d] In the reign of Ethelred the Scottish Prince refused to contribute to the Danegeld tribute (see Part II., *Proofs and Illustrations*, p. 407), but his homage was duly performed, and there is no reason for supposing that the theory of the Scottish dependence was disturbed. True it is that they refused to acknowledge the Danish conqueror; but he was not a legitimate king.

Mælbæthe[a] and Jehmarch. They performed homage, and became the men of the Dane, who effected a total subjugation of the Scottish race and country[b].

The last transactions between an Anglo-Saxon monarch and the Scots, are those, perhaps, which display most clearly the relations between the two crowns. Edward the Confessor is celebrated, in the ode which laments his death, as the "exalted "Ruler of Heroes, the Lord of the Britons, the Welsh, and the "Scots,"[c] and the authority of the most pacific of our English monarchs was never disputed by his vassals. The Scottish throne had been usurped by Macbeth, to the prejudice of Malcolm, the son of Duncan, the regulus of Cumbria. The obligations of lord and vassal were mutual; Malcolm was therefore fully entitled to claim the aid of Edward, nor was the claim denied. A fleet and army despatched by the Confessor, under the command of Siward, Malcolm's uncle, advanced to the north, and the result of the expedition enabled the Earl of Northumbria to obey the behest of his sovereign. Malcolm was appointed king of the Scots, pursuant to the commands of Edward, and from his lord he received investiture of "Scotland," to hold under the Anglo-Saxon crown[d].

Malcolm, by the aid of Edward the Confessor, is placed upon the Scottish throne. The kingdom of Scotland given by Edward to be held of him.

Malcolm, a wise and energetic prince, fully availed himself of the advantages which he possessed. By the acquisition of Lothian, the character of the dominion of the monarchs, whom we may now term Scoto-Saxon, sustained a total change. Malcolm governed this portion of English Bernicia according to the maxims of the Anglo-Saxon monarchy. He was lord of the soil, and was acknowledged as ruler of the Saxon people. The frequent changes of dominion which the Bernicians had sustained since the Danish invasions, probably rendered the

Progress of the Scoto-Saxon kingdom.

Malcolm Canmore entitled to govern Lothian as a feudal Lord, or territorial Sovereign,

[a] Probably Macbeth.

[b] See Part II., *Proofs and Illustrations*, pp. 415–417.

[c] See Part II., *Proofs and Illustrations*, p. 628.

[d] As a fief; the expressions of the original authorities (see Part II., *Proofs and Illustrations*, pp. 424–425) entirely warrant the assertion, *Siwardus Malcolmum*, ut *Rex jusserat, regem constituit.* Rex *Edwardus* Regnum *Scotiæ dedit Malcolmo de se tenendum.* [*Siward appointed Malcolm* as *King*, as the *King* (Edward) *had determined.* King *Edward gave* the Kingdom of *Scotland to Malcolm, to be held of him.*]

Lothian is thus called in the Pictish chronicle (see Part II., *Proofs and Illustrations*, p. 614). It is hardly necessary to observe, that the Lowlanders are only known as "Sassenach" by the Gael.

inhabitants of Lothian indifferent to the lineage of their sovereign; and the preservation of their laws and customs reconciled them to Scottish authority. Beyond the boundaries of "Saxony" and Strath Clyde, and in relation to his own people, the patriarchal power of Malcolm had not received any augmentation. The Gael obeyed him as their chieftain by blood: he was their Ceancinnith, the head of their lineage, and they revered him for his ancestry, but they did not therefore recognize him as the supreme proprietor of the soil of the dales which depastured their cattle, or of the hills and streams which protected and surrounded them. Nor, indeed, was it until the latest periods of the Scottish monarchy that the king can be said to have acquired the entire territorial dominion of the Highlands and their dependencies. Hence, the separation of Scotia and Lothian, subjected it is true to one king, but separated in jurisdiction and laws[a]; and still more dissevered by opinions, customs, manners and language[b]. The Gael bore the most inveterate hatred towards their "Sassenach" fellow-subjects; and the Teutonic inhabitants of the coasts and plains, the descendants of the English Northumbrians, regarded their enemies with equal contempt and horror. They despised the rudeness of the Celts, and dreaded their ferocity[c].

while his authority over the Gael, his own people, was merely personal as a Ceancinnith, or Chieftain by blood or lineage (see above, p. 57), an authority which did not give him any right to be considered as a territorial sovereign.

[a] The chief proofs of this assertion may be seen in Chalmers, vol. i. p. 258.

[b] Thus, in the reign of Alexander II. there was a Justiciar of *Scotland*, and a Justiciar of *Lothian*. The boundary of Scotland in the twelfth century was still the Firths. "In Renfrewshire there is "a proverb, *out* of Scotland *into* Largs, the Clyde being the southern "boundary. In early ages, whoever crossed the Firth, and landed on "the opposite shore, went *out* of Scotland *into* Largs." See Chalmers, vol. i. pp. 258, 368, 372. I apprehend that Lothian and the Lowlands first acquired the name of *Scotland* from the English, who, ignorant of the internal divisions of the country, would designate as *Scotland* all the territory appertaining to the Scottish king. Instances of this kind of inaccuracy, if, in strictness, it can be deemed inaccuracy—for it is nothing more than an ellipsis—are very common. An extreme case is found with respect to Gibraltar: the common people of the neighbouring parts of Spain give the name of *Inglatierra* to that garrison.

[c] Scotichr., lib. ii. c. 9. Not contented with his own vituperations, the worthy chronicler adds as much evidence in aggravation as he can find in Isidorus and Solinus. He bears a very unwilling testimony to

The political union of the territories governed by the Scottish kings was gradually effected, partly by force, and partly by the silent operations of jurisprudence, perhaps not always in accordance with natural justice and equity: and a legal history of Scotland[a] would develope the process by which the most important portions of civil policy have been changed and re-changed, created or destroyed, in obedience to the dogmas of the advocate and the fictions of the tribunal.

Scottish Princes, anterior to the Conquest, to be placed on the same level as the Rulers of the Cymri.

Until the Conquest, we cannot point out any material feature distinguishing the Scottish princes from the other vassals of the English crown. There is no token of dependency affecting the Britons, which does not apply with equal clearness to the lords of Lothian and the rulers of the Gael. Their subscriptions appear in the same charters; they stood side by side when they performed homage to the Basileus; their obligations are conceived in the same terms; and, unless we reject all rules of historical evidence, our assent to the proposition cannot be withheld.

Scottish Lowlands, after the Conquest, to be considered as a portion of the Anglo-Saxon empire of which William possessed the superiority in the same manner as the Anglo-Saxon King (e.g. Edgar) possessed the supremacy of the Earldom of Bernicia, whilst the Scoto-Saxons rule the Gael,

Let us, therefore, again point out the real state and condition of Scotland in relation to Anglo-Norman England. The Lowlands of Scotland are to be considered as a portion of Anglo-Saxon Britain, of which the Conqueror possessed the feudal superiority. Under Malcolm Canmore, Lothian stood in the same relation to the Confessor, as Bernicia had done to Edgar. But the dominion which the "King of Albania" possessed over the tribes beyond his Bernician and Cumbrian territory, was exercised also upon Saxon principles; and he ruled, or attempted to rule, the lords of the Isles and the chieftains of the Gael, just their good qualities, both of mind and body. Ferina gens est et indomita, rudis et immorigerata, raptu capax, otium diligens, *ingenio docilis et callida, formâ spectabilis*, sed amictu deformis. [It is a fierce and untamed race, rude and unmannered, clever at thieving, fond of ease, *docile and warmhearted, comely in person*, but unsightly in dress.] Fordun displays a liberal antipathy to the whole race. A Cromwellian of Ulster could not hate the "wild Irish" more heartily. St. Patrick and St. Bridget, as he says, cleared the island of toads and vipers, because they foresaw that, if the reptiles became as venomous as the inhabitants were wicked, no human creature could live there. All the poison taken from the toads and vipers and snakes has been transferred to the hearts of the people, &c.

[a] Which I hope we may expect from Mr. Tytler[1], who has treated the ancient history of his country with so much ability.

Part I. Ch. XVI.

&c. as the Bretwaldas had done. (See Chap. XX.)

as the Scots themselves had been subjected to the Basileus or the Bretwalda. In all these points of view, the ancient "kingdom of Scotland" possesses great interest: and beyond the Tweed we shall, perhaps, often find the most clear and instructive vestiges of the policy once prevailing in Anglo-Saxon England.[1]

CHAPTER XVII.

The Carlovingian Empire—Explanations of the ancient Anglo-Saxon Government afforded by the Carlovingian Institutions—Influence of Charlemagne on the affairs of Britain—His transactions with Offa—His interference in the affairs of Northumbria—Egbert takes refuge in Gaul before his accession to the Empire of Wessex—Opinion of the Chroniclers, that Egbert was instructed in the art of good government during his exile—Theory of the Empire—Imperial dignity bestowed upon Charlemagne, when the succession of the Empire failed in the person of Irene, upon the assumption that Christendom should always be united under one temporal Head against the Infidels, or Heathendom—Carlovingian Empire not created by an amalgamation of the States included therein—Each State retained its own Laws and Constitution—Feudality, formed by the union of the Roman Beneficiary System and the Teutonic usages of Antrustionship or Vassalage—Alterations sustained by the Roman system when adopted by the Barbarians—Homage and Fealty—Vassi—Chivalry, deduced from the ancient custom of Military Adoption—Examination of various Theories relating to the Origin and Progress of the Feudal System—Right of Inheritance in Benefices or Beneficiary Honours—not absolute, but dependent upon the condition that the homage or commendation should be renewed upon each change of Lord or of Vassal—Alienation of Benefices, effected by resignation into the hands of the Superior—Territorial dignities amongst the Franks—their compound character arising from the Patriarchal authority of the ancient ruling Castes or Families united to grants of delegated or official Dignities, and to the conversion of the Lands occupied by the Clans or Tribes into Benefices, held by the Chieftains as a Patrimony—Application of this Theory as a solution of the difficulties attending the hereditary quality of territorial dignities—Tassilo, Duke of the Bavarians—His History and Adventures—Elucidations afforded thereby—Establishment and Diffusion of the Principles of Feudality—

and consequences of the extension of those Principles—General Assemblies of the Frankish Nation—the Champ de Mars, or Champ de Mai—their decline—Annual Gifts to the Sovereign, equivalent to a regular Taxation of the Vassi—General Placita—Their composition—The Clergy—Ecclesiastical Councils held concurrently with the Assemblies of the temporal Legislatures—Legislation upon Petition—Qualified concurrence of the People—Laws made by the Ordinance of the Sovereign and the consent of the People—Legislation of the dependent Nations exercised in the Mallum—Writs of Summons—Capitula transmitted to the subordinate Legislatures, in order that they might be adopted as Laws—Representation of the People—The Scabini—The Provinces of France not to be considered as dismemberments of the Monarchy, but as States which had retained their original Franchises—The Estates of the Provinces deduced from the Legislatures of such ancient States and Populations—Examples thereof—France under the Third Race aptly designated as a species of confederation.

Part I. Ch. XVII.

Administration and organization of the Carlovingian Empire.

Explanations of the ancient Anglo-Saxon Constitution afforded thereby.

ALTHOUGH the general government of the Anglo-Saxon empire has not passed unnoticed in the preceding pages, yet the investigations hitherto contained in this work have been principally directed to the administration of the laws, and to the particular history of the communities composing the Anglo-Saxon realm. On many points, the reader will already have begun to form his opinions; and the relations existing between the dependent sovereignties and the crown of the supreme sovereign, or "Basileus," have been presented with sufficient distinctness. But in order to obtain a more definite idea of the dominion possessed by the sons of Cerdic, it will be necessary that the inquirer should pause, until some consideration shall have been given to the coeval policy and organization subsisting in the most influential state of the middle ages, the Carlovingian empire.

Subsidiary as this essay may be to my main object, there are many reasons which render it the vestibule, if the term be allowed, of our Anglo-Saxon history. Evidence is wanting at home concerning institutions, whose principles, clearly displayed in the muniments of France and Gaul, afford the best commentary upon our own traditional usages and laws. Marculfus[1] can be employed to interpret a Manorial court roll, and the vassi who assemble round the throne of Charlemagne, at Aix-la-Chapelle or Ingelheim, will sometimes aid us in developing the station held

by the members composing the Witenagemot of the Confessor, or even the parliament of an English king.

Charlemagne possessed considerable influence over the affairs of Britain. The rulers of the Scots became his "subjects and his servants," and submitted to his will[a]. Eardulf, King of Northumbria, expelled and deposed by his turbulent subjects, repaired to the palace of Nimeguen, and was restored by the exertions of the Frankish emperor[b]. Eardulf never violated the

Influence of Charlemagne on Britain. Kings of the Scots submit to the will of Charlemagne, 790, 795. Eardulf, King of Northumbria, restored by Charlemagne, 808.

[a] *Scotorum* quoque Reges sic habuit ad suam voluntatem per munificentiam inclinatos, ut eum nunquam aliter nisi Dominum, seque *subditos* ac *servos* ejus pronunciarent. Exstant epistolæ ab eis ad illum missæ, quibus hujusmodi affectus eorum erga illum indicatur, Einhard, Vita Karoli Magni, Bouquet, vol. v. p. 95. [The Kings of the *Scots* also, he had so inclined to his will by his munificence, that they never spoke of him but as their lord, or of themselves but as his *subjects* and *servants*. There are in existence letters from them to him, in which their attitude towards him is expressed in this way, Einhard, Life of Charles the Great.]

> *Scottorum* Reges ipsum Dominum vocitabant,
> Ac se *subjectos* ipsius et *famulos*;
> Hoc apices ab eis missi testantur ad illum,
> Quorum claret amor maximus alloquio.
>
> Poeta Saxo, lib. v. ll. 303–306.

[The kings of the *Scots* used to call him their lord, and themselves his *subjects* and *dependents*. This is declared to him by letters of their sending, the expression of which plainly shews their strong affection, The Saxon Poet.]

The Scots of Ireland may be intended: but the traditions of the *alliance* between Achaius and Charlemagne connect the transactions with the Scots of Britain. If the expressions do not signify vassalage in its technical sense, they do, nevertheless, imply entire subjection.

[b] 808. Interea Rex *Nordanhimbrorum* de *Britannia* insulâ, nomine *Eardulf*, regno et patria pulsus, ad Imperatorem, dum adhuc *Niumagæ* moraretur, venit, et patefacto adventûs sui negotio, Romam proficiscitur: Romamque rediens, per legatos Romani Pontificis et Imperatoris in regnum suum reducitur. Fuit autem Legatus Apostolici *Adulphus* Diaconus de ipsa *Britannia*, natione *Saxo*, et cum eo ab Imperatore missi Abbates duo, *Rotfridus* Notarius et *Nantharius* de Sancto *Otmaro*, Ann. Francorum Mettenses, Bouquet, vol. v. p. 355. [808. In the meanwhile, the King of the *Northumbrians* in the island of *Britain*, *Eardulf* by name, driven out from his kingdom and country, came to the emperor, while he was still sojourning at *Nimeguen* and

Part I. Ch. XVII.

fidelity which he bore to Charlemagne, the monarch whose protection replaced him on the throne; and although the expression after explaining to him the business on which he came, set out for Rome; and on his return from Rome, he is taken back to his own kingdom by the legates of the Roman pontiff and of the emperor. The pope's Legate was *Adulphus*, a deacon from that same *Britain*, a *Saxon* by nation, and with him two abbots were sent by the emperor, *Ruotfridus* the notary and *Nantharius* of *Sithiu*.]

An epistle upon Anglo-Saxon affairs, addressed by Pope Leo III. to Charlemagne, is extant (Bouquet, vol. v. p. 602), in which the pope alludes to the restoration of Eardulf; and from the same document it appears, that the Missus of Charlemagne had been despatched for the purpose of conducting the Northumbrian to Nimeguen.

De autem omnibus bonis et prosperis, quæ circa Missum nostrum, quem in partibus *Britanniæ* ad *Anglorum* gentem direximus, omnia pro amore B. Petri Apostoli fautoris vestri operati estis, sicut solita est vestra Clementia, magnas gratias vestræ pietati exinde agimus: quia semper in solatio sanctæ Dei ecclesiæ, et adjutorio orthodoxæ fidei decertatis. Sed, sicut nobis per vestram honorabilem epistolam insinuastis, quod *Eardulphus* Rex de regno suo ejectus fuisset, jam hoc per *Saxones* agnoveramus: unde maximè ipsum Missum nostrum pro ipsa nequitia illic direximus. Magnum enim gaudium et magna lætitia in corde nostro ascendit pro eo quod vestra pietas misit Missos suos; et vivum eum ad vos usque perduxistis. Et valde de vita ejus delector, quia et *vester semper fidelis extitit*, et ad nos Missos suos dirigebat. Pro qua re vestra imperialis defensio ubique multipliciter resonat, Bouquet, vol. v. p. 602. [But for all the good and kind things you did for our Envoy, whom we sent into the parts of *Britain* to the race of the *English*, all of which were done by you for the love of your patron, Saint Peter the Apostle, as your Clemency is wont to do, we tender to your piety our great thanks, because you always strive to comfort the Holy Church of God, and to aid the orthodox faith. But, as you have informed us by your honourable epistle that King *Eardulf* had been expelled from his kingdom, we had already learnt this from the *Saxons*; and it was especially on account of this wickedness that we sent our Envoy thither. For great joy and great happiness arose in our heart because your piety sent your Envoys, and you brought him alive as far as yourself. And especially I rejoice for his life, because he has *always remained your faithful man*, and also sent his Envoys to us. And so because of this your action the whole world rings again with the protection afforded by your empire.]

I cannot discover the passage from which it has been inferred by

by which Pope Leo designates Eardulf's allegiance may not fully establish that the Northumbrian had become the liegeman of Charlemagne, yet the transaction evinces the proud extent of the power, if not of the direct dominion, which the Frankish monarch had attained.

Charlemagne seeks to obtain a daughter of Offa in marriage for his son Charles. Offa refuses, unless Charlemagne will bestow his daughter Bertha upon Ecgfrith. Rupture between the two potentates.

At an earlier period, Charlemagne sought to obtain the hand of Offa's daughter for his son Charles. A very friendly intercourse subsisting between the monarchs[a], might well warrant the request; but the Mercian refused, unless Bertha were bestowed upon his own son Ecgfrith, his appointed successor. The demand excited the anger of Charlemagne; and the Frank closed the ports of Gaul against the merchants of Anglo-Saxon Britain[b].

a learned and acute contemporary, that the opponents of Eardulf consented "to submit the decision of their quarrel to the equity of the Pontiff, Leo III." On the contrary, the pontiff acknowledges, that the restoration was entirely due to the emperor; and Charlemagne was jealous of his authority. Adulph not having repaired to the presence of the emperor, the pope was compelled to apologize in the most submissive manner for the neglect of his representative, and to submit all the correspondence to the perusal of Charlemagne. Et quia propter hoc tam festinanter profecti sunt, ut *Eardulphi* Regis iter Romam prævenire potuissent, omnes epistolas, quæ de partibus illis nobis perlatæ sunt, pro vestra satisfactione vobis emisimus legendas, Bouquet, vol. v. p. 603. [And that for that reason they set out so hurriedly in order to anticipate the journey of King *Eardulf* to Rome, we have sent to you all the letters which have been sent to us from those parts, to be read by you for your satisfaction.] In the succession of Northumbria (see Part II., *Proofs*, p. 579) I have said that Eardulf was "supported by Charlemagne, *perhaps* restored by him." The word *perhaps* was inserted in deference to the opinion of a friend, but, upon consideration, I am persuaded that it should be erased.

[a] Charlemagne, in his first epistle, informs his *brother* Offa of the victories gained over the Saxons and Lombards. (Bouquet, vol. v. p. 620.) Another accompanies his gifts; silken palls are sent to the cathedral churches of Offa's dominions as an alms for the repose of Pope Hadrian's soul, ...vestræ quoque dilectioni unum balteum et unum gladium Huniscum, et duo pallia serica. [And for your beloved self a belt and a Hunnish sword and two silken mantles.] Gifts of arms accompanied the ceremony of military adoption (Part II., *Proofs*, p. 782). Were they, in this instance, mere marks of friendship?

[b] All this is told in detail in the chronicle of St. Vandrille, or Fontanelle (Bouquet, vol. v. p. 313), and upon the best authority. Gervaldus,

Part I. Ch. XVII.

Alcuin[1], the Saxon, the friend and confidant of Charlemagne, was despatched[a], as an ambassador, to restore peace between the realms. The very imperfect memorials relating to these transactions display the reciprocal dissensions and jealousies of the two monarchs. Alcuin defends himself against the suspicions which he had incurred; and the earnest assertion that he had never been unfaithful to Offa and the English, indicates the nature of the charge[b]. An Archbishop of Canterbury, as Offa

Apprehensions entertained by Offa, in consequence of Charlemagne's real or supposed designs.

abbot of this monastery, by whom the demand of Offa's daughter was made, had been frequently despatched to the Mercian court by Charlemagne, multis vicibus, jussione potentissimi Regis *Caroli* ad præfatum Regem *Offam* legationibus functus est [many times he had served on embassies to the aforesaid King *Offa*, by the order of the most powerful King *Charles*]; and this is an important fact, inasmuch as it shews the closeness of the intercourse between the two empires. Perhaps the daughter of Offa was the hateful Eadburgha, who, after causing the death of her husband Beorhtric, proceeded to Gaul and offered herself to Charlemagne. (Asser, p. 11.)

[a] This is the opinion of the Benedictine editors: but, perhaps, we should say "*employed*," as it is not entirely certain that he repaired to England in his diplomatic capacity. Alcuin's own expressions are the following: Nescio quid de nobis venturum fiet. Aliquid enim dissentionis, diabolico fomento inflammante, nuper inter Regem *Carolum* et Regem *Offam* exortum est, ita ut utrinque navigatio interdicta negotiantibus cessat. Sunt qui dicunt nos pro pace esse in illas partes mittendos. [I know not what will become of us. By the instigation of the devil, some dissension has lately arisen between King Charles and King Offa, so that on both sides navigation is forbidden to the merchants and has stopped. There are some who say that we are to be sent into those parts to obtain peace.] Usher places this letter in 795, Mabillon in 790; a portion of it is preserved by Malmesbury. According to the chronicle of St. Vandrille, the closing of the ports was prevented by the mediation of Abbot Gervald. He probably assisted in the negociations; and hence his chronicler gave him all the credit of the result.

[b] *Offæ* Regi et genti *Anglorum* nunquam infidelis fui [I was never unfaithful to King *Offa* and the *English* race], is the expression employed by Alcuin in his epistle (7) to the priest Beornwine. In addressing Offa (Will. Malm. lib. i. c. 3), he takes great pains to impress him with an opinion of the friendly intentions of Charlemagne, sciat veneranda dilectio vestra quod Dominus Rex *Carolus* amabiliter et fideliter sæpe locutus est mecum de vobis, et in eo habetis fidelissimum amicum.

conceived, was implicated in secret correspondence with the Frankish sovereign, even to the extent of facilitating an hostile invasion. The conduct pursued by Charlemagne explains, and perhaps justifies, the surmises of Offa[a]. Gaul, at this troubled period, offered a sanctuary to the Anglo-Saxon exiles. Some fled from Mercia with their superior chieftain, who escaped capital punishment by taking refuge in Gaul. Charlemagne labours to shew that this protection had been afforded purely out of pity, and not for the purpose of fomenting discontent. The noble, as the Frankish monarch declares, would have been acquitted, had he been allowed to continue in his native country[b]. The

Charlemagne receives the Anglo-Saxon refugees.

[Your revered and beloved self should know that King *Charles* has often spoken with me of you amiably and loyally, and that in him you have a most faithful friend.] Offa was reported to have negociated or treated with Charlemagne for the deposition of Pope Hadrian. (Ep. Hadriani Papæ, Bouquet, vol. v. p. 590.) Offa repelled the charge with apparent indignation. Our curiosity is raised by the indications of these intrigues.

[a] Accusatus est autem *Iambertus* Archiepiscopus *Cantuariæ* coram Rege *Offano*, accusationibus pervalidis: quarum una fuit, quod *Cantuaria* nimis vicina fuit regnis *Karoli* transmarinis, cui etiam ante contracta fœdera, promiserat idem *Iambertus Karolo*, quod si hostiliter ingressurus *Britanniam* adveniret, liberum in Archiepiscopatum suum introitum inveniret, favorem, et adjutorium, Vita Offæ Regis, Concilia, vol. i. p. 153. [But *Jaenberht*, Archbishop of *Canterbury*, was accused in the presence of King *Offa* with the most serious accusations; of which one was that *Canterbury* was too near the realms of *Charles* across the sea, and that the same *Jaenberht*, even prior to the friendly relations of the two countries, had promised *Charles* that if he should attack *Britain* in a hostile manner, he would find free access to his Archbishopric, and favour and support.] The charge thus preferred against Iamberht was one of the causes which induced Offa to erect his Mercian archbishopric of Lichfield. (See Chap. XXI.)

[b] The chieftain is designated in the printed text, by the corrupted name of *Umhrinsgstan*,...qui ut nobis visum fuit, fidelis suo fuisset domino, si in patria licuisset perseverare. Sed ut mortis evaderet periculum, ut dicere solebat, fugit ad nos, semper paratus se ab omni purgare infidelitate. [*Umhrinsgstan*, who, as it seemed to us, would have been faithful to his lord, if he had been allowed to remain in his country. But he fled to us that he might escape the peril of death, as he was constantly saying, and was always prepared to prove himself guiltless of all unfaithfulness.] The epistle is addressed to Archbishop Athelheard and Bishop Ceolwulf, requesting them to intercede with

Part I. Ch. XVII.

Anglo-Saxon fugitive was accused of treason against King Offa. It is difficult to avoid looking with a considerable degree of distrust upon the *compassion* entertained by a powerful and ambitious Sovereign towards those who had found a shelter in his dominions, after conspiring against a neighbouring power, and more particularly so, at a period of mutual ill-will, if not of declared hostility. We cannot understand the details of these intrigues: but we must advert to the fact, that amongst the Anglo-Saxon outlaws and fugitives, there was *one*, destined to change the entire fortunes of Britain.

786. Accession of Beorhtric, King of the West Saxons. Crown claimed by Egbert, who takes refuge, first in the dominions of Offa, and afterwards in Gaul. (See II., pp. 342, 343.)

Upon the death of Cynewulf, the crown of Wessex was placed upon the head of Beorhtric. The succession was claimed by Egbert. King and pretender were both of Cerdic's race; and Egbert, unable to assert his rights, escaped into Mercia, for the purpose of avoiding the vengeance of his successful competitor. Offa refused to surrender the "rebel"; but Egbert was, nevertheless, compelled to depart from Britain. Gaul became his place of refuge. Here Egbert continued during years of adversity, but not of misfortune. The old chronicler dwells emphatically upon the events, by the course whereof, Egbert was taught and disciplined amongst a people, then excelling all other nations of the west in military policy, as well as in civilization. And thus the future "Bretwalda" "rubbed off the rust of "indolence, and adopted customs, far different from his own "native barbarity."

799–802. Egbert continues in Gaul until he obtains the Crown of Wessex. Egbert instructed in the art of government during his residence in Gaul, then considered as excelling all other regions of Christendom in civilization.

There has always been so much sympathy in the political feelings of the European Commonwealth, that the example and pattern of Charlemagne and his Empire would, without doubt, have affected our Anglo-Saxon policy, although Egbert had never visited the dominions of the "Glorious Emperor," or been instructed in the civilization and policy of Gaul[a]. The people

Offa for the fugitives, and it is evident that he was the "Dominus" against whom "Umhringsstan" had conspired.

[a] *Egbertus* transnavigato mari, *Franciam* venit; quod, Dei consilio, factum intelligo, ut vir ille, ad tantum regnum electus, regnandi disciplinam à *Francis* acciperet. Est enim gens illa et exercitatione virium et comitate morum cunctorum occidentalium facile princeps. Hac igitur contumelia *Egbertus*, ut cote, usus est, quæ detrita inertiæ rubigine aciem mentis expediret, et mores longe a gentilitia barbariæ alienos indueret, Will. Malm. de Gestis Regum, lib. ii. c. 1. [*Egbert*, having crossed the sea, went to *France*; and this, as I take it, came about

might have demanded a portion of the care and vigilance which watched over the destiny of the Franks; and the sovereign, perhaps, even more readily, would have tried to introduce a part of the machinery, which tended to consolidate the royal power. But Egbert's accession seems to have produced a decided and immediate effect. Invested with a dominion equivalent in nature to the empire of Charlemagne, his vigorous mind was enabled to put his *kingcraft* into practice. Had a lesser degree of good fortune attended him, the example of Charlemagne would have been useless to the son of Alchmund. Untaught, he might have been unable to secure his authority. But all requisite conditions coincided in Egbert; and although the history of his reign is reduced to a brief and scanty notice of his victories, we may still, perhaps, discover that the important points of similarity to the Carlovingian institutions, discernible in the Anglo-Saxon empire, resulted from the instruction which the royal exile had obtained.

(See Chap. XXI.)

Carlovingian Empire. Imperial dignity bestowed upon Charlemagne, in order that *Christendom* might be united under one head against *Heathendom*.

Ambition is readily imputed to the warrior, and the pontiff is easily suspected of ministering to worldly pride, in the expectation of enhancing his spiritual supremacy. Yet it must be acknowledged that the theory, according to which the son of Pepin obtained the Empire, possessed an imposing character of expediency and grandeur. Bestowed for the benefit of the Christian world, the imperial dignity assumed a species of religious aspect. Raised to this high estate, the Emperor appeared as the protector and defender of Christendom. Formed out of the Fourth great monarchy, the states which had replaced the Roman Empire still regarded each other as members of the same community[a]. Look to the chronological tables, those easy but delusive means of obtaining the *caput mortuum* of history, and we shall be informed that the Empire of the West was extinguished in the person of Augustulus. But the principle

Charlemagne not to be considered, according to the common theory, as the successor

through the counsel of God, so that the man destined for so great a kingdom should learn the art of government from the *Franks*. For that race far excels all other western races in military policy and civilization. And so, *Egbert* used that ill-treatment as a whetstone to rub off the rust of indolence and sharpen the edge of his mind, and adopt customs far different from his native barbarism.]

[a] L'ancien empire d'occident étoit toujours, malgré sa dissolution, regardé comme un seul corps politique [The early empire of the West was always, notwithstanding its disintegration, regarded politically as an unit], Sismondi, vol. iii. p. 358, speaking of the empire of Charlemagne: equally true of the Roman empire.

Part I. Ch. XVII.

of Augustulus, but as created Emperor to supply the failure of the succession in the person of Irene. The Empire, upon its so-called division, held by the Emperors of the East and West as joint tenants, so that upon the extinction of the *Western tenancy* in the person of Augustulus, the entirety survived over to the East.

which had prevailed upon the first division of the imperial authority, still maintained its influence. The administration might be entrusted to many sovereigns as *joint tenants*, yet the Empire constituted only *one* body politic. And this *unity* was admitted even in those provinces where the throne of Constantinople did not possess any real political power. The nations were afraid to confess that the eternal dominion of the Mistress of the world was dissolved. In its decline, the imperial government had been unable to afford any protection to the subjects who were oppressed and ground down by fiscal tyranny: but association seems to impart strength to weakness. A common religion might supply the place of patriotism. An idea began to prevail, that those who were members of one Church, should also form but one civil commonwealth. The barbarians of Germany never persisted in enmity towards the religion of the Empire; but the Prophet of Mecca had raised up a dominion, of which the very essence was perpetual hostility towards the Christian faith. If the "pagan" followers of Mahomet were combined for evil under their Caliph, was it not equally incumbent upon the followers of the Cross to recognize one temporal head, whose mediation might prevent the shedding of Christian blood, and whose power could shield them against the common enemy? It is difficult to trace the progress of opinion, until it is evidenced by overt acts; but the circumstances accompanying Charlemagne's elevation to the throne of the Cæsars sufficiently manifest the existence of these political theories.

Byzantium was defended, not by her lofty ramparts, but by the memory of Constantine. Unworthy as the Greek emperors had been of their pre-eminence, their real insignificance was veiled by the uninterrupted homage rendered to their supremacy. And even the jealousy with which the imperial court watched its ancient titles, and retained its gorgeous pageantry, may have contributed to sustain the tottering throne. The female reign of Irene[1] afforded a plausible pretext for declaring that the imperial succession had wholly failed: an interregnum had occurred. Rome asserted her rights; and her senate, her prelates, and her nobles, acting as the virtual representatives of the Catholic Church, and of the whole Christian world, placed the imperial diadem upon the brows of the Frankish sovereign[a].

Imperial diadem bestowed by the virtual representatives of the Christian world.

[a] 801. *Et quia jam tunc cessabat a parte Græcorum nomen imperatoris, et femineum imperium apud se abebant,* tunc visum est et ipso

Charlemagne's wisdom, or perhaps his vanity, rejected the apostolico *Leoni*, et universis sanctis patribus qui in ipso consilio aderant, seu reliquo Christiano populo, ut ipsum *Carolum* regem *Franchorum* Imperatorem nominare debuissent, qui ipsam *Romam* tenebat, ubi semper Cæsares sedere soliti erant, seu reliquas sedes quas ipse per *Italiam* seu *Galliam* necnon et *Germaniam* tenebat; quia Deus omnipotens has omnes sedes in potestate ejus concessit: ideo justum eis esse videbatur, ut ipse cum Dei adjutorio et universo Christiano populo petente ipsum nomen aberet. Quorum petitionem ipse Rex *Karolus* denegare noluit, sed cum omni humilitate subjectus Deo et petitione sacerdotum et universi Christiani populi in ipsa Nativitate Domini Nostri Jesu Christi ipsum nomen imperatoris cum consecratione Domni *Leonis* Papæ suscepit, Annales Laureshamenses, Pertz, vol. i. p. 38. [A.D. 801. *And because at that time the name of Emperor had already ceased to be used on the part of the Greeks and they had female rule among themselves*, then it seemed good to the Pope *Leo* himself, and to all the holy fathers who sat with him in the council, and to the rest of the Christian people, that they ought to nominate *Charles*, the king of the *Franks*, as Emperor, who held *Rome*, where the Cæsars were always accustomed to be enthroned, and the other thrones which he held in *Italy* and *France* and also in *Germany*, because Almighty God granted all these thrones in his power: it therefore seemed good to them that by the aid of God and on the request of the whole Christian people he should have this title. And King *Charles* was unwilling to deny their request, but with all humility in subjection to God and on the petition of the priests and of the whole Christian people, he took the title of Emperor on the very birthday of Our Lord Jesus Christ, and was consecrated by *Leo*, the Lord Pope, Annals of Lorsch.]

801. Ipse vero Rex die sacratissima Natalis Domini, cum ad missam ante Confessionem Beati Petri Apostoli ab oratione consurgeret, *Leo* Papa cum consilio omnium Episcoporum sive Sacerdotum, seu senatu *Francorum*, necnon et *Romanorum*, coronam auream capiti ejus imposuit, adjuncto etiam populo *Romano* acclamante;—"*Carolo Augusto a Deo coronato, magno et pacifico Imperatori Romanorum, vita et victoria!*" Post laudes verò à plebe decantatas et ab Apostolico, more antiquorum principum adoratus est. Nam et hoc nutu Dei factum est: cum enim apud *Romam* tunc præfatus Imperator moraretur, delati quidam sunt ad eum, dicentes quod apud *Græcos nomen Imperatoris cessasset*, et femina apud eos nomen imperii teneret, *Herena* nomine, quæ filium suum Imperatorem, fraude captum, oculos eruit, et sibi nomen imperii usurpavit, ut *Atalia* in libro Regum legitur fecisse. Hoc audito, *Leo* Papa et omnis conventus Episcoporum et

Part I. Ch. XVII.

ornaments of Grecian pride. He, who listened with delight to

Sacerdotum seu Abbatum, et Senatus *Francorum*, et omnes majores natu *Romanorum*, cum *reliquo Christiano populo* consilium habuerunt, ut ipsum *Carolum* Regem *Francorum* Imperatorem nominare deberent, qui *Romam* matrem imperii tenebat, ubi semper Cæsares et Imperatores sedere soliti fuerant; *et ne pagani insultarent Christianis, si imperatoris nomen apud Christianos cessasset.* Ideo justum visum est omnibus, ut prædictus Rex cum Dei adjutorio, *et universo Christiano populo petente*, ipsum nomen imperatoris haberet. Quorum petitionem ipse Rex *Carolus* negare noluit; sed cum omni humilitate subjectus Deo, et petitione sacerdotum universalique populo Christiano in ipsa Nativitate Domini nostri Jesu Christi cum consecratione Domni *Leonis* Papæ suscepit, sicut supra dictum est, Chron. Moissiac., Bouquet, vol. v. p. 79. [A.D. 801. On the most holy birthday of Our Lord, when, at mass before the Confession of the Blessed Peter the Apostle, the King arose from prayer, Pope *Leo*, by the counsel of all the Bishops and Priests, and the senate of the *Franks*, and also the senate of the *Romans*, placed a golden crown on his head, while all the *Roman* people stood by and shouted, "*Life and victory to Charles, the Augustus, the great and pacific Emperor of the Romans, crowned by God.*" And after praises had been sung by the people the Pope also did obeisance to him after the manner of ancient princes. For this also was done by the will of God, for while the aforesaid Emperor was tarrying at *Rome*, certain men gave him information. saying that among the *Greeks*, *the title of Emperor had ceased*, and that a woman held the Imperial title among them, *Herena* by name, who captured her son, the Emperor, by guile and put out his eyes, and usurped for herself the Imperial title, as *Athalia* is said to have done in the book of Kings. When they heard this, Pope *Leo* and all the assembly of the Bishops and Priests and Abbots, and the Senate of the *Franks* and all the elders of the *Romans*, with the *rest of the Christian people*, held a council and decided to nominate as Emperor, *Charles*, the King of the *Franks*, who held *Rome*, the mother of the Empire, where the Cæsars and Emperors had always been wont to dwell: *and so that the Pagans should not insult the Christians, if the title of Emperor should cease from among the Christians.* And so it seemed just to all, that the aforesaid King with the aid of God *and at the request of all Christian people*, should have that title of Emperor. And their petition King *Charles* refused to deny; but with all humility and subjection to God, and on the petition of the priests and the whole Christian people, he assumed the title on the very birthday of Our Lord Jesus Christ, with the consecration of *Leo* the Lord Pope as is aforesaid, Chronicle of Moissac.]

those strains, which are now faintly echoed in the Book of Heroes

The Annales Laureshamenses, which conclude in 803, are contemporary with the events which they relate. It is greatly to be regretted that other chronicles have been so corrected as to deprive them, in part, of the venerable barbarity which best attests the truth of the text. The Chronicle of Moissac, however, is probably of equal antiquity. Let us now compare the originals with a modern version

Ces acclamations et cette couronne furent considérées comme ayant *renouvellées* l'empire d'occident après une *interruption de trois cent vingt-quatre ans, depuis la déposition d'Augustule.* Si le nom d'empire Romain présentoit encore aux habitans de l'Europe, après *une si longue interruption*, des idées de grandeur, et de puissance supérieure, ce n'étoit pas une vaine flatterie que celle qui faisoit renaître le titre d'empereur pour l'attribuer à Charlemagne. Charles, en recevant la couronne impériale, adoptoit en quelque sorte, les souvenirs de Rome, et de l'empire. Il se déclaroit le représentant de la civilisation antique, de l'ordre social, de l'autorité légitime, au lieu d'être plus long temps celui des conquérans barbares qui fondoient tous leurs droits sur l'épée[1], Sismondi, vol. ii. pp. 380, 382.

As it is of great importance to correct the propagation of an erroneous doctrine, sanctioned by illustrious names, I shall venture to remind M. Sismondi, that the common theory of the assumption of the imperial authority by Charlemagne, is entirely in contradiction to the original authorities above quoted, and, indeed, to the facts which he himself discloses. M. Sismondi has shewn that Rome was subjected to the direct dominion of the emperors, under the pontificate of Leo, and Charlemagne was hailed, *not as the remote successor of Augustulus*, but, *as the immediate successor of Constantine V.* No one supposed that the dormant empire was revived. It seemed to fail suddenly by the usurpation of a female; and, upon this emergency, Charlemagne was called to the imperial throne. After his elevation there was but one empire, though held by *joint tenants* as before. He was a rival Co-regent, who had been forced upon the Byzantine emperor, but not the head of a rival empire. The schism of the Greek and Latin churches finally destroyed this theoretical unity.

The form of the inauguration, indicated by the historians who relate the accession of Charlemagne, appears more clearly in the case of Charles le Chauve. Pope John VIII. thus relates the mode of his election or nomination: Et quia pridem Apostolicæ memoriæ decessori nostro Papæ Nicolao idipsum jam inspiratione cælesti revelatum fuisse comperimus, elegimus hunc merito et approbavimus, unà cum annisu et voto omnium fratrum et co-episcoporum nostrorum atque aliorum Sanctæ Romanæ Ecclesiæ ministrorum, amplique senatûs,

Part I. Ch. XVII.

and the Nibelungen-lay[a], disdained to array himself in the effeminate garments of the east, and rarely did he even consent to assume the patrician robe. But in his titles, and still more by his acts, the "glorious Emperor" vindicated his lofty station. His successors took the insignia of the Byzantine court[b]; yet,

Title of Basileus (see II., p. 664) not expressly assumed by Charlemagne.

totiusque Romani populi, gentisque togatæ et secundum priscam consuetudinem, solemniter ad imperii Romani sceptra proveximus et Augustali nomine decoravimus, Capitularia Caroli Calvi, VII. p. 695. [And because we have ascertained that that very thing was formerly revealed to our predecessor, Pope Nicholas, of apostolic memory, by the inspiration of heaven, we have elected him deservedly and approved him, along with the assent and vote of all our brethren and fellow bishops and the other ministers of Holy Roman Church, and of a full senate *and of all the Roman people and of all the toga-wearing race*, and, according to ancient custom, we solemnly exalted him to the sceptre of the Roman empire and distinguished him with the name of Augustus, Capitulars of Charles the Bald.]

[a] Necnon quæ veterum depromunt prælia Regum,
Barbara mandavit carmina litterulis, Poeta Saxo, lib. v. l. 545.
[And also he committed to writing the barbarous songs which reveal the battles of ancient kings, The Saxon Poet.]

Barbara et antiquissima carmina, quibus veterum Regum actus ac bella canebantur, scripsit, memoriæque mandavit, Eginhard, p. 100. [He wrote and committed to memory the barbarous songs of days long past in which are sung the deeds and battles of kings of old.]

[b] *Karolus* Rex de *Italia* in *Galliam* rediens, novos et insolitos habitus assumpsisse perhibetur: nam talari dalmatica indutus, et baltheo desuper accinctus pendente usque ad pedes, necnon capite involuto serico velamine, ac diademate desuper imposito, Dominicis et festis diebus ad ecclesiam procedere solebat. Omnem enim consuetudinem Regum Francorum contemnens, Græcas glorias optimas arbitrabatur: et ut majorem suæ mentis elationem ostenderet, ablato Regis nomine, se *Imperatorem et Augustum omnium Regum cis mare consistentium appellari præcepit*, Annales Fuldenses, Bouquet, vol. vii. p. 181. [When King *Charles* returned from *Italy* to *Gaul*, he is said to have assumed new and unwonted dresses: for clad in a dalmatic reaching to the ankles and girt over this with a belt hanging to the feet, with his head also wrapped in a silken veil, and a diadem placed over it, he was wont to go in procession to church on Sundays and feast days. For despising all the customs of the kings of the Franks, he thought the pomps and vanities of Greece were best, and to shew the excess of his vain-glorious thoughts, he forsook the title of king,

in one very important point of ceremonial, they respected the prejudices, or acknowledged the superiority claimed by the "sacred majesty" of New Rome, and the proud title of "Basileus" was never expressly assumed by the Emperors of the West[a].

Carlovingian empire *not* created by a union or amalgamation of the different states and populations of which it was composed.

Charlemagne laboured to extend his dominions from the Ebro to the Oder; and well might he glory in the magnificence of his throne. But the refined notion which imputes to him the design of forming a "great people,"[b] is as little supported by the facts as by the opinions and policy of the middle ages. Charlemagne neither sought nor effected any amalgamation of the parts composing his Empire. Law followed the person. The Theodosian Code or the Salic Doom was an inheritance. Each nation, race and tribe continued to submit as a separate community. The several descendants of the Roman, the Goth, the Frank and the Lombard could each respectively claim the rights which their fathers had possessed. A similar right was asserted by communities. The municipal franchises possessed by the ancient cities of Roman Gaul were modified by the political circumstances of the times; they might be wholly lost, if the Roman population died away amidst the new races who poured in amongst them. Decay and misery accompanied the barbarian invasions; but there was no general proscription of the municipalities by the intruders; and, until the fleur-de-lys was blotted out from the royal shield, many cities could deduce the political existence of their corporations in uninterrupted descent, not only from the era of the Roman empire, but from the first dawn of authentic history[c]. The provinces overspread by the Visigoths retained their Roman jurisprudence and their other institutions, which so long distinguished the "Pays du droit écrit" from the other component parts of the Frankish monarchy.

Individuality of the several nations, states, races and communities included within the empire, each retaining their own laws and administration.

Cities of Roman Gaul. Many of them retain their political existence, as deduced from the Roman period, until the Revolution.

and *ordered that he should be called Emperor and Augustus of all the Kings dwelling on this side of the sea*, Annals of Fulda.]

[a] Though they went so far as to assert that "Imperator" was equivalent to it. In *his own acts and diplomas* a Frankish emperor never styled himself *Basileus*, like the Anglo-Saxon kings. The anxious attempt of Louis II. to obtain a formal recognition of the imperial title (Gibbon, vol. ix. p. 194), did not obtain the result which he desired.

[b] See Guizot, Essais sur l'Histoire de France, p. 83. The historian has supposed that the policy of the imperial court of the Tuileries prevailed in the palace of Ingelheim.

[c] Marseilles, Nismes, Tournay, Toulouse and Boulogne afford remarkable exemplifications of this fact. (Dubos.)

Part I. Ch. XVII.

If the Roman portions of the Carlovingian empire thus assert their national existence, the Teutonic members display still greater autonomy. Confirmed and republished by the Frankish kings, the laws of the Salians, the Ripuarians, the Frisons, the Bavarians, the Alemanni, the Saxons, the Werini, are to be viewed as so many charters, which insured to each of these nations their distinct and several governments beneath the imperial sceptre[a].

Many of these masses of population were ruled by their ancient dynasties; all still possessed those ancient modes of Teutonic government, according to which a substantial share of political power continued vested in the community. But these bodies gravitated towards a common centre, and many causes were in silent operation, tending to increase the power of the crown and to prepare the way for a political union: though centuries elapsed before such incorporation was accomplished and fulfilled.

The earlier annals of the Franks exhibit the sovereign as exerting great, though irregular, authority. However sturdy the subject may have been during peace, the king, as the military chieftain, had assuredly a most influential command during war: and this authority was now acquiring a more fixed and permanent existence by means of the institutions of feudality.

Feudal system, founded upon the Roman military system of Benefices; Lætic and Limitanean grants (see above, pp. 292, 295) united to Teutonic usages and doctrines.

The feudal system was created by the union of Roman laws and barbarian usages. The heterogeneous nature of the elements is not immediately discernible. When we contemplate the venerable structure, we are, in some degree, deceived by the uniform tint which time has bestowed. But a closer examination of the parts will easily enable us to detect their origin, and to

[a] The general revision of the Barbarian laws took place in the great Placitum or Council held at Aix-la-Chapelle, 802, concurrently with a synod of the clergy: Et ipse Imperator, interim quod ipsa synodus facta est, congregavit Duces et Comites, et reliquum populum Christianum cum legislatoribus: et fecit omnes leges in suo regno legere, et tradere unicuique homini legem suam, et emendare ubicumque necesse fuit, et emendatam legem scribere, Chron. Moissiac., vol. v. p. 80. [And the Emperor himself, at the same time as that synod was held, assembled the dukes and counts and the rest of the Christian people with the legislators: and caused that all the laws in his kingdom should be read, and that his own law should be delivered to each man, that it should be amended wherever it was necessary, and that the amended law should be written down, Chronicle of Moissac.]

point out how the fragments furnished by the Romans have been built up and cemented, so as to form the fabric of feudality.

Whatever the barbarians copied, whether in art or jurisprudence, they imitated rudely; they worked in coarser materials, and with inferior tools. Under the chisel of the Frank or the Goth, the pillar was deprived of its proportions, the acanthine capital lost its grace, and in all the details of his building the architect tried to be a copyist. But his mind was employed in raising an edifice on a vast and comprehensive plan. The parts adapted themselves into each other, column ranged with column, arch rose upon arch. The resemblance to the prototype becomes more and more indistinct; and the series which begins in the Atrium of Diocletian, or in the Basilica of Constantine, ends in the cloister of Salisbury, or the long-drawn aisles of Notre Dame.

Feudal system. Personal relationship of Lord and Vassal founded upon the Teutonic *Antrustionship* or homage. (See II., p. 738.) But the tenure of the Beneficiary land borrowed from the Roman jurisprudence.

If we assume that the personal relations of lord and vassal were founded upon the customs of the Teutons—not, perhaps, without some Celtic intermixture—but that the tenure of the Beneficiary land was adopted from the jurisprudence of the Lower Empire, we shall, perhaps, obtain a clue by which we may be guided through the labyrinth of inquiry. But in this investigation it is necessary, in the first place, to reject the very popular theory, that the feudal policy of those states, which were founded by the barbarians in the fifth and sixth centuries, resulted from a preconceived plan, or a systematic division of the lands of a conquered kingdom. We have been told[a], that "the king or "general who led the warlike people forth to conquest, and "continuing still to be the head of the colony, had of course the "largest portion allotted to him. Having thus acquired the means "of rewarding past services, as well as of gaining new adherents, "he parcelled out his lands with this view; binding those on

Feudal system; popular but erroneous theory of its origin propagated by Robertson, Montesquieu, &c.

[a] See Robertson's View. The great popularity of this writer renders it the more important to point out his errors. Let it not be supposed that I am writing in the spirit of criticism. His works, by their great merit as literary compositions, created that taste for historical reading which now prevails. But those who follow his footsteps are enabled to correct him, and without any attempt at detraction or rivalry. The theory of the systematic division has been so generally abandoned on the Continent, as well as by our soundest authorities at home, that some of my readers will perhaps think that I am killing the slain: but having been presented to the public in so many popular works, and even very recently, the refutation of this historical heresy becomes expedient.

Part I. Ch. XVII.

"whom they were bestowed to resort to his standard, with a "number of men in proportion to the extent of the territory they "received, and to bear arms in his defence. His chief officers "imitated the example of their sovereign, and, in distributing "portions of their lands amongst their dependents, annexed the "same condition to the grant."

Supported by many plausible arguments, and some incontrovertible facts, this opinion is recommended by its simplicity. But the main idea upon which the theory rests, viz. that a feudal state received its peculiar conformation from a regular partition of lands amongst the Teutonic conquerors, at the period when they gained the empire, involves a fallacy by which the whole course of history is subverted. If true, it is true only of Normandy, and of the Norman conquests in Britain and the south; and, perhaps, of those lands won from the infidel, after the system was fully matured[a]. In those states which arose upon Roman ground, the process was directly the reverse, and we must consider the feudal form of the whole, as the aggregation of members beneath the protection of a common sovereign. In the same way as the oaths of *obedience* exacted from the bishops of the various Western Churches, gradually rendered these independent communities the subjects of the Roman pontiff, so did the acts of *homage* performed to the temporal sovereign end by combining the parts into one monarchy.

Feudal system could not have arisen amongst the Teutonic nations.

If the essential character of a feudal Benefice be the possession of land for the life of the grantee—and I may here remark, that no Benefice was ever held for a shorter term—it is clear that the first idea of such endowments could not have arisen amongst the Teutonic nations, to whom any permanent occupation of land was originally unknown. But as the Limitanean and Lætic lands furnish an exact precedent for the system of military tenures, there cannot be any difficulty in admitting that the Franks and other Barbarians merely continued to follow the model which they saw before them: all that they did, was to continue the policy, by which their fathers had become settled within the limits of the empire[b]. Can it excite any surprise

Germ of the feudal system found in the donations of the Lætic and Limitanean lands, and other military benefices of the Romans. (See above, pp. 288–296.)

[a] I allude more particularly to Valencia and Catalonia, and to the Latin kingdom of Jerusalem.

[b] For the process by which the Benefice acquired the colloquial name of "Fevd," see Part II., *Proofs and Illustrations*, pp. 286–288. Additional instances may be given to shew that the terms

that Benefices should have been granted by Clovis, the kinsman of the "*Leute*," who had so long served under the Eagle? Were not the Franks, in all their branches, the very tribes who had been so often benefited by the mistaken policy of the declining were synonymous until a late period:—Habemus autem prædictum *fevum*, et omnia ad illud pertinentia, per vestrum *beneficium*, sicut habuimus retroactis temporibus per Comitem *Barchinonensem*. (Hypothecation made by Berenger, Viscount of Narbonne, to Raymond, Count of Barcelona, his Senior, A.D. 1067. Hist. de Languedoc, vol. ii., Preuves, p. 256.) [But we hold the aforesaid *feud*, with all its appurtenances, through your *benefice*, as we had it in past time through the Count of *Barcelona*.] A later and more important example is found in the grant made by the Emperor Frederick I. to his nephew, Raymond Berenger, A.D. 1162: Præterea damus ei in *feudum* Comitatum *Forocalquerii*, cum omnibus regalibus suis pertinentibus ad comitatum, ita quod idem Comes de *Forocalquerio* faciat hominium et fidelitatem Comiti *Provinciae*, quemadmodum nobis deberet; quod si facere noluerit, perdat comitatum. Hoc ideo de *Forocalquerii* Comite fecimus, quoniam ex quo Romani imperii diadema divinitus adepti sumus, ad curiam nostram venire, et *beneficium* suum a manu nostra recipere contumaciter supersedit: Cujus Comitatus justo judicio ita nobis adjudicatus est, quod inde faciamus quidquid nobis placuerit. Prædictus vero *Raymundus* illustris Comes *Provinciæ* juravit nobis fidelitatem contra omnes homines, et præstitit quod faciat servitium nobis et Imperio pro prædicto feudo, Martene, Amplissima Collectio, vol. i. p. 861. [Moreover, we give him the County of *Forcalquier* for a *feud*, with all the royal rights pertaining to the county, provided that the same Count of *Forcalquier* do homage and fealty to the Count of *Provence*, in the same manner as he owed it to us; but if he refuse to do it, he shall lose the county. This we have done with the Count of *Forcalquier*, because from the time when we by divine providence assumed the diadem of the Roman empire, he has contumaciously refused to come to our court and accept his *benefice* from our hand; and his county was by a just judgment adjudged to (be forfeited to) us, so that we might do with it whatever we pleased. But the aforesaid *Raymond* the illustrious Count of *Provence*, has sworn fealty to us against all men, and has promised that he would do service to us and the Empire for the aforesaid feud.] The County of Provence was granted to Raymond by the same charter, and, consequently, the declaration relating to the homage due to the Count of Provence was to take effect in case of a subinfeudation. William II. of Forcalquier appears to have been the Count thus deprived. He was afterwards restored to the possession of his County. (Art de Vérifier les Dates, vol. ii. p. 446.)

Benefices granted by Clovis in imitation of the lands granted during the Empire to the *Leute* or Liti (see above, p. 292, &c.

Part I. Ch. XVII.

Empire? The earliest example recorded in history of a Benefice granted by a Barbarian is the donation made by the first Christian monarch of the Franks to a Roman who had passed under his authority[a]. Who were the Ripuarian Franks? are there not good reasons for supposing that they were the Limitanean soldiery, who had united into one people with the Teutons, by whom they were surrounded[b]?

Provinces, how occupied by the Barbarians.

Be it conceded that the Barbarians took possession of the best and largest portions of the estates of the Romans: yet these acquisitions were not the acts of the nation, but of the individual. The shaggy warrior stalked into the villa, brandishing his battle-axe, and the humbled and appalled patrician, happy to escape from the presence of the unwelcome "*Guest*,"[c] vegetated in sullen silence upon the share of the farm, the third or the fourth which he was allowed to retain. But the invention of this mode of compelling the citizen to provide for the soldier, was not entirely due to the Barbarians: they were only able copyists; they

Sortes or allotments of land to the Barbarians, under the title of *Guests*.

This mode of providing for the military apparently suggested by the Roman law, according to which

[a] Melun, with the government of the adjoining country, was granted as a Benefice by Clovis to a Roman: *Clodoveus...Milidunum* castrum eidem *Aureliano*, cum totius Ducatu regionis jure beneficii concessit, Aimoinus, de Gestis Francorum, Bouquet, vol. iii. p. 38. [*Clovis*... granted the castle of *Melun* with the Dukedom of the whole region to this same *Aurelian*, to be held as a benefice.] Aimoinus lived in the eleventh century, and hence doubt has been cast upon this passage, merely because we cannot find it in some earlier authority. But in other passages it may be seen how literally Aimoinus transcribes from his predecessors. And there is no valid reason for supposing that in this instance he did otherwise than follow some earlier chronicle now lost. The Benedictine Editors of Du Cange consider also that the gift noticed in the following passage is an example of a Benefice: Et *Amo* quidem *Ebredunensem* carpens viam usque *Macho villam Avennici* territorii, quam *Mumolus* munere meruerat regio, accessit, ibique fixit tentoria, Greg. Turon. lib. iv. c. 30. [And *Amo* truly taking his journey towards *Embrun*, arrived at *Macho villa* in the territory of *Avignon*, which *Mumolus* had obtained by the bounty of the king, and there pitched his tent.]

[b] Eccard, in his commentary upon the Ripuarian law, maintains this position, and with great plausibility.

[c] It was by this epithet that the Burgundians designated the Barbarian who took possession of the allotment which he was said to hold "jure hospitalitatis." (LL. Burgund.) This subject has been ably treated by Savigny (vol. i. p. 255, &c.), and Allen (p. 25).

borrowed the main idea from the Imperial government. When the military appeared in the Roman city, the legionary was thus placed in the dwelling, and one third of the premises was allotted to the *Hospes*, whom no one dared to turn away from his door[a].

one third of the house, &c. was allotted to the Legionary, under the denomination of *Hospes*.

[a] The law is very curious on account of its despotic precision. It is one of the many proofs that the burdens of the Roman subjects under the imperial government were scarcely less vexatious than the exactions of the Barbarians.

In qualibet vel nos ipsi urbe fuerimus, vel hi qui nobis militant commorentur, omni tam mensorum quam etiam hospitum iniquitate summota, duas dominus propriæ domus, tertia hospiti deputata, eatenus intrepidus ac securus possideat portiones, ut in tres domo divisa partes, primam eligendi dominus habeat facultatem, secundam hospes quam voluerit exequatur: tertia domino relinquenda. Plenum enim æquitate atque justitia est, ut qui aut successione fruitur aut empto, vel exstructione gaudet, electam præcipue judicio suam rem teneat et relictam. Ergasteria vero, quæ mercimoniis deputantur ad prædictæ divisionis injuriam non vocentur, sed quieta sint et libera, et ab omni hospitantium injuria defensata, solis dominis conductoribusque deserviant. Sane si stabulum, ut adsolet, militari viro in tertia domus parte defuerit, ex ergasteriis, nisi id dominus qualibet occasione providerit, pro animalium numero vel domus qualitate deputabitur. Illustribus sane viris, non tertiam partem domus, sed mediam *hospitalitatis gratia* deputari decernimus: ea duntaxat conditione servata, ut alter ex his quilibet, quive maluerit, divisionem arbitrii æquitate faciat, alter eligendi habeat optionem, Cod. Theod., lib. vii., tit. 8, l. 5, de Metatis. [In every town where we ourselves may be or where those sojourn who fight for us, to remove all unfairness both on the part of the quarter-masters as well as the guests, the owner shall, without fear or anxiety, keep possession of two parts of his own house, the third part being assigned to his "guest," in such wise that in a house divided into three parts, the owner shall have the first liberty of choice, the "guest" shall occupy the second which he prefers, and the third part shall be left to the owner. For it is full of equity and justice that a man who enjoys a heritage or a purchase or a house should hold that part of his property which he had chosen and also the part that was left. But workshops, which are used for wares, shall not be liable to the burden of the aforesaid division, but shall be quit and free and preserved from every exaction on the part of the guests, and remain for the use of their owners and hirers alone. But if, as is often the case, a stable is wanting in the third part of the house allotted to the soldier, unless the owner provide it in some other way, it shall be provided out

Part I. Ch. XVII.

It is extremely probable that, in the first instance, the occupation of the Roman lands by the Barbarians was a temporary military arrangement—a Roman hospitation—but which would easily pass into a permanent right of property. That the Roman provinces were thus settled by the Barbarians is unquestionable; but the colonization is not such as in any degree to satisfy the ordinary feudal theory, since there is no evidence, nor, indeed, any presumption, that any compact was made with the Senior, that any military service was reserved to the state, or, lastly, that the possessor of the "Sors," or "Lot," was specially bound, in respect thereof, to render any homage to his superior. It is therefore not in these acquisitions, better considered as allodial lands, that we discover the "germ of feudality"; for the *last condition* is indispensable. There is no *Gothic* feudality unless the parties be connected by the mutual bond of vassalage and seignory.

Roman beneficiary policy takes a new form under the Barbarians.

Since we can plainly arrive at the general plan of the feudal arrangement, by deducing it from the Roman system, it is difficult to understand why any other origin should have been sought. But, as I have before observed, the Roman principle consisted solely in the assignment of a particular portion of land as the price of military service. This is the dry outline of feudality. Institutions, however, take the most important part of their character, not from the technicality of the law, but from the mind and manners of the people. The spirit of Beneficiary tenure, when adopted by the Franks, would result from the character of the soldier. A "*Scara*" of Barbaric "*Leute*" planted in Armorica would perform their obligations in a manner widely different from a Latian cohort settled in the defiles of Cappadocia. A Celtic provincial would command and be commanded far otherwise than a citizen of mere Roman descent. A great proportion of the population continued undisplaced. The descendants of the chieftains who had warred against Cæsar were incorporated in the senatorial order of Roman Gaul. The peasantry, oppressed by exactions in the days of Divitiacus and

of the workshops, according to the number of the beasts, or the quality of the house. But for men of rank, we decree that, not the third part, but the half of the house shall be provided *by way of hospitality*; but only on this condition being observed, that one of the two, whoever prefers, shall make the division according to his judgment of what is fair, and the other shall have first choice, Theodosian Code, Concerning Billets.

Vercingetorix, bore the same burden when they afterwards tilled the ground as "coloni." And, perhaps, we shall not be very far from the truth, if we attribute to the institutions of primeval Gaul the peculiar haughtiness possessed by French feudality in the middle ages. The singular steadiness with which all the successive occupants of that country have exhibited the same national merits and failings has not passed unnoticed[a]. But we

Pride and haughtiness of French feudality, perhaps to be deduced from the usages prevailing in Gaul before the Roman conquest (see above, pp. 17 & 27).

[a] Heylin in France painted to the Life, has expatiated upon this permanence of the Gallo-Francic character with instructive quaintness: Certainly whosoever will please to peruse the Commentaries of Cæsar de Bello Gallico, he will easily guess him an historian, and a prophet. He will rather make himself believe that he hath prophesied the character of the present French, than delivered one of the ancient Gauls. And, indeed, it is a matter both of wonder and observation, that the old Gauls, being in a manner all worn out, should yet have most of their condition surviving in those men which now inhabit that region, being of so many several countries and originals. If we dive into natural causes, we have a speedy recourse unto the powerful influence of the heavens; for as those celestial bodies, considered in the general, do work upon all sublunary bodies in the general, by light, influence and motion, so have they a particular operation on particulars: an operation there is wrought by them in a man, as born at such and such a minute; and again, as born under such and such a climate; the one derived from the setting of the houses, and the lord of the horoscope, at the time of his nativity: the other from that constellation which governeth, as it were, the province of his birth, and is the genius, or Deus tutelaris loci.

Two or three authors, by name of parallel, will make it clear in the example, though it appear not obscure in the search of causes. Primus Gallorum impetus major quam virorum; secundus minor quam fœminarum [the first attack of the Gauls is more mighty than that of men, the second less than that of women], saith Florus of the Gauls. What else is that which Mr. Dallington saith of the French, when he reporteth that they begin an action like thunder, and end it in a smoke? Their attempts on Naples and Millaine (to omit their present enterprise on Genoa) are manifest proofs of it. Neither will I now speak of the battaile of Poictiers, when they were so forward in the onset, and furious in the flight, ut sunt Gallorum subita ingenia [the temperament of the Gauls is hasty], saith Cæsar; and I think these people are well known to be as hair-brained as the other ever were. Juvenal calleth Galliam fœcundam causidicorum [Gaul prolific of pettifogging lawyers]; and, amongst the modern French, it is related that there are more

Part I. Ch. XVII.

need not, like the old traveller, look upwards to the stars for the purpose of explaining this phenomenon. It has its source in the magical sympathy of human nature. Man takes his moral character from his moral atmosphere. Placed even amongst those we hate, contemn, or despise, we imperceptibly learn to imitate our neighbours. The English conquerors of Erin became more Irish than the Irishry. And the Latin or Teutonic settlers, inserted amongst the Gaulish population, would imbibe the feeling of the races by whom they were surrounded.

Held by a Barbarian, a Benefice laid out (if the term can be allowed) according to the Roman fashion, would thus soon assume a new and peculiar form. And the practice of the law would be entirely influenced by the character of the community. The personal privileges and duties of the Barbarians would also be commingled with the Roman Beneficiary law. No freeman amongst the Teutonic tribes could be exempted from the duty of co-operating in the defence of the community. But the summons to the conflict proceeded only from the assent of the chieftains and the voice of the assembly; they asked to go forth, and the king, if king he was, obeyed the sovereign will. Military command, when possessed by a ruler, was imparted to him for that special occasion: he directed and swayed the host as they marched from their forests, but they had not assembled at his command. The Roman policy, on the contrary, was a pure and unmixed autocracy. The emperor's edict emanated from his irresponsible authority, his mandate called forth the cohorts. No Teutonic king could have claimed such a power. His dignity was bestowed by the nation in order that he might lead them forth; he was only the first amongst his peers; he received the impulse from the nation, he was not the source of its energies. Such national principles, though greatly enfeebled, were not entirely obliterated. Thus, amongst the Franks this military authority was exercised with the concurrence of the warriors assembled in the Champ de Mars. In the military "placitum" they decided upon the expedition. The vassus had received his land from the king, but the king was, nevertheless, compelled to solicit the assent of the Beneficiary. And such a controlling power re-appears in every European monarchy. But, as in other branches of administration, the Teutonic governments affected

Military policy of the Barbarians. Its effects upon beneficiary tenure.

Military placita, or conventions (see above, p. 90, and below, p. 454).

law cases tried in one year, than have been in England since the Conquest. (p. 46.)

the Roman form. And if the precept penned by Cassiodorus[1], is to be received as declaring the practice of the Gothic monarchy, we must admit that Theodoric of Verona endeavoured, though using the language of persuasion, to act as if he possessed all the power of the Cæsars[a].

[a] Universis *Gothis Theodoricus* Rex. Innotescenda sunt magis *Gothis*, quàm suadenda certamina, quia bellicosæ stirpi est gaudium comprobari. Laborem quippe non refugit, qui virtutis gloriam concupiscit. Et ideò, juvante Deo, quo auctore omnia prosperantur, pro communi utilitate exercitum ad *Gallias* constituimus destinare; ut simul et vos provectûs occasionem habere possitis, et nos quæ præstitimus meritis contulisse videamur. Latet enim sub otio laudabilis fortitudo: et dum se probandi non habet spatium, occulta est lux tota meritorum. *Atque ideò per Nandium Saionem nostrum admonendum curavimus, ut ad expeditionem, in Dei nomine, more solito, armis, equis rebusque omnibus necessariis sufficienter instructi, octavo die calend. Juliarum proximè veniente modis omnibus, Deo favente, moveatis:* quatenus et parentum vestrorum in vobis ostendatis inesse virtutem, et nostram peragatis feliciter jussionem. Producite juvenes vestros in Martiam disciplinam. Sub vobis videant, quod posteris referre contendant. Nam quod in juventute non discitur, in matura ætate nescitur. Accipitres ipsi, quorum victus semper ex præda est, fœtus suos novitate marcentes, nidis proturbant ne molli otio consuescant: alis verberant immorantes: cogunt pullos teneros ad volatum, ut tales debeant existere, de quibus possit pietas materna præsumere. Vos autem, quos et natura exigit et amor opinionis exacuit, studete tales filios relinquere, quales vos patres vestros constat habuisse, Cassiod., Variæ, lib. i. p. 24. [King *Theodoric* to all the *Goths*. Intimation of a conflict is enough for the *Goths*, they need no exhortation to it, because it is a joy to a warlike race to win approval. Truly, he shuns not toil who desires the glory of valour. And so, by the aid of God, under whose auspices all things prosper, we have decided for the common weal to direct our army to *Gaul*; so that at the same time you may have opportunity of advancement, and that we may be seen to bestow what we have offered on those who deserve it. For under ease praiseworthy bravery lies concealed; and so long as there is no opportunity of approving oneself, the whole light of one's deserts is hidden. *And so by Nandius our herald we have caused you to be warned to march on this expedition, in the name of God, in your wonted fashion, sufficiently provided in all manners with arms, horses and all necessary things, on the 24th of June next, with God's favour,* that you may both shew that the valour of your fathers has descended to you, and happily accomplish our bidding. Lead forth your young men for martial exercise. Let

Part I. Ch. XVII.

The Roman law bestowed the gift and imposed the duty, but the legislature did not contemplate the creation of any mutual bond between the subject and the sovereign. There was no

them see under you, what they may be eager to tell to their descendants. For what is not learnt in youth, is unknown in mature age. The very hawks, whose living is always obtained from their booty, drive from their nests their offspring, while still feeble fledglings, lest they grow accustomed to soft ease; they beat the laggards with their wings; they force their tender chicks to flight, so that they may turn out such as a mother's fondness can imagine in anticipation for them. But you, whom nature compels, and the love of praise has rendered keen, study to leave such sons, as, it is agreed, your fathers left in your persons.]

For the sake of comparison, an English writ of general summons is added below. The ancient *clerks*, when employed as the secretaries of their sovereigns, took great pains to ornament the official instruments with the flowers of eloquence. Hence the collections of the so called Epistles of Cassiodorus, Eginhard, Fulbert, &c. are in great part composed of Precepts, Writs and other documents, drawn by them in their official capacities. In the Precept framed by Cassiodorus, it is not difficult to discern the set form of the lawyer, amidst the embellishments of the rhetorician; and the general similarity to the writ of King John is sufficiently evident. The *Saio* or *Sagio* was a species of apparitor: *Saiones* vel *Sagiones* apud *Gothos* et *Wisigothos* dicti apparitores, regii videlicet ac magistratus ministri, qui ad eorum jussa exequenda semper præsto erant, Du Cange. [Summoners among the *Goths* and *Visigoths* were called *Saiones* or *Sagiones*, to wit, attendants on kings and magistrates, who were always ready to execute their commands.] He performed the office of the sheriff's summoner in England.

Rex Vicecomiti *Lincolniæ*, &c. Præcipimus tibi quod summoneri facias per bonos summonitores omnes illos qui tenent de nobis per serjantiam in balliva tua, quorum nomina scripta alias tibi misimus, quod sint ad nos apud *Cestriam* die dominica proxima post Assumptionem Beatæ Mariæ instantem, bene parati equis et armis, et præmuniti victualibus ad eundum nobiscum in servicium nostrum; et hanc summonitionem per testimonium talium fieri facias, quod non possint negare se summonitos fuisse, et habeas ibi hoc breve et aliud breve. Teste me ipso apud *Wudestok'*, xxi. die Julii. Eodem modo scribitur omnibus Vicecomitibus *Angliæ*, Rot. Claus. 14 Joh. [The King to the Sheriff of *Lincolnshire*, &c. We command you that you cause to be summoned by good summoners, all those who hold of us by serjeanty in your bailliwick, whose names we have sent to you in another

implied compact between the parties. Not so in the Barbarian monarchies. If the "man" owed his service, the lord was to afford defence. The land was the body of the fief, but the vivifying spirit arose from another source, from the peculiar usages of the Teutonic tribes, from those relationships which united the superior and the inferior by reciprocal obligations of protection and dependence.

Antrustionship, relations between Lord and Vassal. Elderman, or Senior, and Vassus, or Junior (see II., pp. 738, 740), not known to the Romans, contribute to the formation of the Feudal system when united to the tenure of beneficiary land. Engagements of the Antrustion, otherwise called Commendation, Homage, or Vassalage (see II., pp. 738, 755–781). (See II., p. 741.)

Constituting a numerous class in the state and community, the "*Antrustiones*," or "*Vassi*," were originally voluntary followers of the chieftain, his peers and equals; and they still claimed to be so, when they were really subordinate to his power and command[a]. But the protection which the "vassus," or "junior," obtained when he commended himself to a lord or "senior," and placed his hands within the hands of the superior, was a virtual acknowledgment of inferiority; and became still more so, when the protector was invested with the prerogatives of royal dignity. This homage was confirmed in the most solemn and impressive guise. The vassal swore that he would keep his "*trust*" without fraud or guile. He was bound by oath, varying in form according to circumstances, and enforced on all occasions when fidelity was to be insured[b].

The services of the Antrustion, in primitive times, might have been requited by a gift, or purchased by a share of the booty. A *Benefice* would be a more desirable reward, and the

manner in writing, that they be in attendance on us at *Chester* on the Sunday next after the present Feast of the Assumption of the Blessed Mary, well provided with horses and arms and furnished with victuals to go with us in our service; and that you cause this summons to be made by the testimony of such witnesses that they cannot deny that they were summoned, and that you have there this writ and the other writ. Witness myself at *Woodstock*, 21st July. In the same way it is written to all the Sheriffs in *England*.]

[a] To the question, Quo nomine vester *Senior* fungitur? the followers of Rollo answered, Nullo, quia æqualis potestatis sumus, Dudo, Historia Norm., bk. ii. p. 76. [By what name is your *Superior* described? None, for we are his equals in power.] But it is evident that this was a mere boast, and that they rendered all needful obedience to their commander.

[b] For the forms and oaths of homage and fealty, see Part II., *Proofs and Illustrations*, pp. 776–781; abundant proofs will there be found of the position in the text.

Leudes, as these retainers were also called, would be among the first to profit from the opportunity which the Sovereign now possessed of rewarding them by grants of fiscal lands. The obligation of fealty has been deduced from the Roman military oath; but in all those formulæ which have been transmitted to us, we find more than the promise of obedience, *aid, counsel, and secrecy* are added. The terms of the oath apply themselves accurately to the character of the Antrustion; and we can scarcely hesitate to admit, but that the form was suggested by his engagement, and considered as supplementary to the act of homage. The engagement and the donation, the Teutonic homage and the Roman grant, would be so often united in the same person, that at last the one would seem to be the necessary consequence of the other. The relationship of vassalage, originally personal, became annexed to the tenure of land.

Obedience, aid, counsel, and secrecy, implied by the engagement of the Homager or Vassal. Duty of military service resulting from these obligations.

Whilst we can adduce the most clear and positive evidence, that the possession of a Benefice, in the age of Charlemagne, drew with it the actual obligation of military service, I must not conceal that doubts have arisen as to the period when such a condition was imposed. Charles Martel has been considered as the founder of the system; and, anterior to his age, it has been conjectured that no specific duty of military service attached to Beneficiary land[a]. But, as I have before observed, we cannot reasonably disconnect the institution from the Roman grants. Take any particular instance; see how the Pannonian March Counties—the modern Austria—were held by the condition of opposing the inroads of the Moravian Slavi; the same identical tenure as that of the Limitanean Duces, who guarded the Isaurian defiles. We find an established form and precedent, "the germ of feudality," existing at the very time, and in the countries occupied by the Barbarians. We find those same Barbarians, the *Leod*, or People, endowed, during the subsistence of the empire, with possessions given as the price of military service; and all legitimate modes of historical reasoning are set at nought, if we seek any other source than the institutions, which must have forced themselves upon the Barbarians as the model of their policy. The very absence of an explicit reservation of military service in the beneficiary grants, may be received as proof that the obligation resulted from a general law. It was due of common

Benefices. Theory that military service was not imposed as a duty upon the Tenant thereof until the age of Charles Martel. Reasons for doubting this supposition.

March Counties, or Marquisates, e.g. such as the territory held by William & Engelschalk in Pannonia, now Austria (see II., p. 755) entirely similar to the *Limitanean* territories held by the Roman Duces and Milites (see above, p. 290).

[a] Mably (vol. i. p. 203), who speaks with unusual decision. He is followed by Guizot.

right, and therefore no particular stipulation became necessary[a]: though, in some cases, the grantor might, for greater security, think fit to insert the condition in express terms. Yet, I admit that the system was modified from time to time, changing in details with the alterations in the general policy of the realm. Charlemagne *re-formed* his Empire in the best sense of the term; and we may ascribe a greater degree of regularity and consistency to the regulations which he framed. Possibly he may have derived many useful lessons from the military organization of the Provinces wrested from the Byzantine authority. Amongst the Greeks of the Lower Empire the Roman beneficiary system was preserved. The land paid and rewarded the soldiers; and though the cohorts of Constantinus Porphyrogenitus might be inefficient when mustered in the field, the Code which commanded their services was considered as a most useful precedent. Frederick Barbarossa, the greatest, after Charlemagne, of the Latin Emperors, amended the feudal jurisprudence of Lombardy, which as yet had not been reduced into writing, by consulting the Constitutions of the Eastern Empire; and he studied the military Code of the Greeks at the time when Western Europe was fully under the dominion of feudality[b].

Beneficiary system, existing amongst the Greeks of the Lower Empire.

Frederick Barbarossa (1152–1190) studies the Grecian or Byzantine law of Feuds, for the purpose of improving the laws of his own dominions.

[a] Thus, in England, if a grant was made by the crown, to hold in capite, without declaring the tenure, the law supplied the deficiency, and declared that the land was held by knight's service, or military tenure. After the reign of Charlemagne, we find many grants in which the service of the vassal is expressed as the consideration for the grant (see Part II., *Proofs and Illustrations*, pp. 753, 754). Amongst the Anglo-Saxon grants, some are made upon condition of fealty (see id., p. 302, no. 4), and of specific military services (see id., p. 304, no. 5); the reservation was unnecessary, but it was expressed, out of caution.

[b] For this assertion I must quote Senkenburgh, Corpus Juris Feudalis Germanici, Pref. p. xxxvii. The constitution of Constantine Porphyrogenitus *περὶ στρατιωτῶν*, first published by Leunclavius and again by Cujacius and Senkenburgh, establishes the existence of military benefices in that part of the Roman empire which had not been occupied by the Barbarians. It is very singular that Gibbon should never have adverted to Greek feudality. It did not escape the notice of Craig; Quinetiam *Græci* in Feudorum prima origine vendicanda postremi esse nolunt, ex *Constantini Porphyrogeniti* constitutione Græca, quæ etiam adhuc extat. In ea multa de prædiis militaribus traduntur, quod onus iis inhæreret, ut quandocunque

Part I. Ch. XVII.

The engagements of the Antrustion were not merely confined to military service. The homager resorted to the court of the lord whom he had chosen as his superior, for the vassal had sworn to aid his senior with his counsel, and to obey all lawful commands. So long as the bond subsisted, it placed the parties nearly in the same relationship to each other as if belonging to the same natural family, as if they were united by consanguinity: and a further connexion, of a similar nature, was occasionally created by the ceremony of military adoption. This custom arose out of a most ancient usage amongst the Teutons. Tacitus tells us how the youth was invested with the arms of manhood in the solemn assembly of the people. And a series of illustrious examples will prove, that long after all memory of the original policy of the Germanic tribes was lost, the parent still continued to invest the child with those insignia which declared that he might take his seat in the council, and encounter his enemy in the field. But the chieftain might be childless, or his child unworthy of the honour; or policy might suggest the expedient of obtaining the friendship of a rising warrior, whose future power he might apprehend. Hence, the Barbaric nations allowed the superior to present the sword and the shield and the courser to a stranger in blood, whom he received as his offspring, his "son of arms." Theodoric thus adopted the king of the Heruli[1];

Military adoption. Knighthood derived from the ancient German custom of investing the youth with arms upon his attaining his full age (see II., pp. 781–784).

Military adoption of the King of the Heruli, by Theodoric of Verona. (See II., p. 782.)

dominus ediceret, ad militiam possessores instructi compareant; aut si justam excusationem cur non possint habeant, veluti si valetudine detineantur, tantum tamen pecuniæ domino repræsentent, quantum ad militem vicarium conducendum sufficeret, cujus opera in bello dominus uti possit, quæ omnium Feudorum natura est et conditio, Craig, Jus Feudale, p. 43. [Nay even the *Greeks* are determined not to be backward in claiming to be the originators of Feuds, relying on the evidence of the Greek constitution of *Constantinus Porphyrogenitus*, which is extant to this day. In it much is recounted touching estates held on military tenure as to the burden imposed on them that, whenever the superior orders, the occupiers must appear prepared for military service; or, if they have a valid excuse for their non-appearance, as for example, if they are detained by sickness, yet they must pay such a sum of money to their lords, as shall suffice to hire a substitute, whose help in the war the lord may use; and this is the nature and condition of all Feuds.] Craig objects to this opinion; and he opposes it by maintaining, that the constitution of Constantine is too modern to be assigned as the *origin* of Feuds; but the law is merely *declaratory*, and not the establishment of a new scheme.

and, without doubt, filial respect was claimed by the adopting father in return for the boon.

The progress of this institution is extremely obscure, and we cannot trace the process by which the ceremony, seldom noticed in the early chronicles except with respect to the real or adopted offspring of a sovereign, became the honour, and, at last, the burden of the feudal warrior. And although knighthood never appears so clearly connected with the tenure of land, as the homage of the Antrustion, yet the general aspect of feudality derives its most brilliant features from Teutonic chivalry.

According to a theory, once supported by eminent names[a], Benefices passed through three gradations or stages. Granted in the first period, merely at pleasure, the tenant next acquired an estate for life; and lastly, by usage or usurpation, an hereditary right was obtained. More recently, however, those who have distinguished themselves in historical inquiry, reject the *first* gradation, and agree in the opinion that the vassal always possessed a right to the land during the term of his life; and that the apparent resumption of Benefices must be considered as seizures made by the superior, who would have justified his act, by maintaining that the Antrustion had forfeited the condition upon which the land was held. This power might be abused, for the vassus might be guiltless of the felony; but I doubt if we can consider this principle as vague, floating and without guarantee[b]: the practical uncertainty arose from the absence of any competent tribunal, by which the vassal could have been protected, if the superior attempted to exceed his lawful powers.

Difficulties attending the theory, that the hereditary principle was not established until the reign of Charles le Chauve,

The authorities to whom I have alluded agree, however, in considering that, except in special cases, the hereditary principle was not established by law until the reign of Charles le Chauve, "about which period the grants very generally contain an express "declaration of the right of inheritance in the land."[c] It is,

[a] Montesquieu, Robertson, Mably.

[b] Le seul droit qu'eut le donateur, et qui ne fut pas contesté, c'étoit celui de retirer ses bénéfices pour manque de fidelité, pour trahison, révolte, et tout autre acte par lequel le compagnon nuisait à son chef, au lieu de lui servir. C'étoit là le principe qui présidait à leurs relations, principe vague, sans garanties, et dont il étoit facile et aisé d'abuser à une époque où la force décidoit presque seule de toutes les choses. Guizot, p. 132.[1]

[c] Hallam. Guizot, Allen.

Part I. Ch. XVII.

however, admitted that at a much earlier period there are specific examples of hereditary grants. And the treaty of Andelot[1] (587), and the edict of Clothaire (614), afford such strong indications of the hereditary principle, that the advocates of the non-hereditary nature of the original Benefices find themselves unable to extricate themselves from the difficulties which they themselves are compelled to raise. All these difficulties, however, will be removed, if we recollect that a Beneficiary or Feudal estate was held upon condition. The tenant had only the right of enjoying the *usufruct*; the *dominion*, or absolute property, belonged to the superior; and the Benefice was to be *taken up again*[a], if it lapsed into the possession of the lord. Death dissolved the bond of homage. When the ancestor died, an *absolute* inheritance was *not* cast upon the heir. Certainly he has an inchoate right of inheritance: but in order that the heir may avail himself of such right, it is incumbent upon him to enter into the engagements by which his father has been bound. The usufruct of the land was connected with an onerous duty. Perhaps the heir might not be able to perform the service demanded from an Antrustion: or, he might be disinclined to commend himself to the senior; therefore, he was not entitled to enter upon the land by his own act. He was kept out, until he obtained investiture from his lord. The land was received upon condition; it was not the land of the heir until such condition was performed: and then, but not before, a new grant was made to him, because the compact was fulfilled. Another contingency

which difficulties will be removed if it be recollected that the Benefice was held *upon condition* of fealty, or homage, and that the right of possession or inheritance was not absolute, but depended upon the performance of such condition.

Homage continued only

[a] The Feud or Benefice *fell* into the possession of the lord, and was to be *taken up again* by the vassal. *Relevare Feudum, Relever le Fief*, est Feudum caducum vel possessoris morte in domini superioris jus delapsum, illius consensu et certa et definita exsoluta pecunia hæreditario jure adire, possidere: seu potius in feudi caduci possessionem a domino mitti. [*Relevare Feudum, to take up the fee*, is to enter on by right of inheritance, to get possession of a fee which has fallen or passed by the death of the tenant into the hands of the superior lord, by his consent and on the payment of a fixed and definite sum of money: or rather, to be sent into possession of a lapsed fee by the lord.] The law of Du Cange is taken from the later periods of Feudality: the expression, and the idea of the expression, are derived from the earliest. In our legal language, we speak of being *admitted* to a copyhold: but the countryman always uses the ancient phrase of *taking up* his holding.

might arise. The mutual *Trust* continued only during the joint lives of the parties. The vassal who had commended himself to the senior, might not be willing to bind himself to the senior's heir. Consequently, a renewal of the compact was necessary upon every change of the lord[a]. The vassal had to repair to the superior, and to obtain a new investiture of the Benefice which he held. It may be said, that these are the doctrines of later times. But let us apply them to the era of Charlemagne. We possess evidence that we are justified in so doing; and we shall have a full solution of the presumed struggle between the right of inheritance and the prerogatives of the crown. The new grant of the Benefice did not proceed from the mere motion of the superior or sovereign. The land, it is true, had reverted to the senior. The inheritance was in his hands. The heir was compelled to pray that the loan might be renewed to him. If the senior died, the heir, now the tenant, again addressed the same supplication to the new superior. But the law dictated the answer: the superior was not a free agent; and the terms of the original grant bound the sovereign to his part of the contract, provided the vassal acceded to the condition which such contract had imposed[b].

during the joint lives of Lord and Vassal, and was dissolved on the death of either. Therefore, if the Lord died, the Tenant was bound to repair to the new Lord, and to perform homage; and if the Tenant died, the Heir was bound to perform homage to the Lord: and, in either case, the Tenant obtained a new investiture. (See II., pp. 744, 748.)

The doctrines exemplified by the Precepts of Charlemagne[1] continued to be the maxim of the feudal law: homage was

This principle exemplified by the Precepts of Charlemagne (see II., p. 742, &c.)

[a] Bracton lays down the law as a general principle, not admitting of exception; Pluries successivè capi poterit homagium, quia cùm ab initio factum fuerit homagium à tenente, et captum à domino, semper tenet homagium, quousque uterque simul, vel alter eorum moriatur, et tunc per mortem decedentis solvitur sive dissolvitur, quia *mors omnia solvit ex parte decedentis*, sive dominus sive tenens fuerit, lib. ii. cap. 35, § 5. [Homage can be received several times in succession because, while at the beginning homage was done by the tenant and received by the lord, the homage always remains until both together, or one of them dies, and then by the death of him who has died, it is released or dissolved, because *death releases all things on the part of the deceased*, whether he be tenant or lord]; and the homage of the peers at the coronation is evidently the result of this law. According to Littleton (ii. § 148), the tenant in such a case was bound to repeat his fealty, but not his homage; this distinction is of no importance as to the main argument. In several Northumbrian manors the tenants paid a fine to the lord upon his acquiring the seignory.

[b] See, in particular, the grants made to the Spaniard "Johannes" and his children, see Part II., *Proofs and Illustrations*, p. 745.

Part I. Ch. XVII.

renewed upon each mutation of the lord. At the creation of the King of Neustria, the inauguration of a Count of Flanders, and the coronation of an English king the same ceremony is performed. The Flemish vassals receive a new investiture of their fiefs. And in England, the general renewal of charters, which anciently took place upon the accession of the sovereign, is to be considered as being in the nature of a restitution of the lands, which the tenants in capite held of the crown; and not merely as a confirmation or acknowledgment of the tenures[a].

and his sons, by the new investitures made on the accession of an Earl of Flanders (see II., p. 775), and by the renewal of homage on the accession of a King of Neustria (id., p. 774), or of an English King (id., p. 778).

Connected with the right of inheritance is the power of alienating the possession of the land. Charlemagne grants a *Mansus* to his faithful vassal, and the charter imports that the tenant may give and grant, and sell the property, at his free will and pleasure. But how was the transfer to be made? The vassal appeared before the sovereign, in the presence of the Proceres, his equals, bound by the same allegiance: and, casting the symbol into the lap or bosom of the superior, he surrendered up the land, which was immediately regranted to the person whom he wished to substitute in his stead. That such was the mode of alienating a tenure, in the times when the feudal law was in full vigour, is familiarly known[b]: but it is singular, that the formula affording the most convincing proof that similar proceedings took place in the early ages of the Frankish monarchy, should have been long misinterpreted. Instead of considering the "Præceptum de Læsiwerpo"[1] in its true light, as relating to a transaction substantially the same with a surrender to the use of a grantee effected in an English Court Baron, it has been invariably viewed as a surrender of allodial land, made for the purpose of converting the property into a Beneficiary tenure[b].

Alienation of a Frankish Benefice effected, as appears from the formulary of Marculfus, by surrendering the Benefice to the Lord, to the intent that he might regrant the same to the alienee. (See II., p. 749, &c.)

[a] Many other causes might have concurred in rendering such new charters desirable; a charter under the great seal of the reigning monarch was susceptible of easier proof than if it was produced under the seal of his predecessor. But the charter is in the form of a new grant; and although, even in the thirteenth century, the original principle may not have been always kept in sight, still such grant was a necessary consequence of the renewal of the homage upon the accession of the King (see Chap. XXI.).

[b] As, anciently, the vassal of himself could not alienate, there was, besides the vassal's grant, further need, either of a confirmation by the superior, or of a surrender into his hand, if the fief was to remain with him, or of a surrender to, and new grant from, the superior, if it

Few portions of early policy are more obscure than those relating to the territorial dignities of the Frankish empire: but

was intended to be transferred to another. In Scotland, the forms of original and derivative grants remained in the law, so that now in these last, where the grant is in favour of a third person, the gift and the possession, the charter and the seisin, appear, in point of form, to proceed from the superior in the same manner as if the grant had been from him gratuitous and original. (Dalrymple on Feudal Property, p. 196.) See also Lord Hailes' remarks on the transfer of the Earldom of Huntingdon made by William, King of Scotland, to David (Annals, vol. i. p. 131), and of the Earldom of Carrick by Robert Bruce to his son Robert (vol. i. p. 279).

I must refer to the Precept and its commentary (see Part II., *Proofs and Illustrations*, p. 749, &c.) for proofs of my interpretation. Hallam evidently suspected that it had been misconstrued.

Those who are employed upon similar inquiries will easily excuse me, if I confess that, in the course of the composition of this work, my opinions concerning the nature of the ancient tenures of landed property have undergone many changes; and it is only very recently, and, indeed, whilst these sheets were passing through the press, that I entirely convinced myself that the Precept was a mere instrument of feudal conveyance. A friend, however, to whose authority I greatly defer, offers the following objections:—

1. "The land, which is the subject of the charter published by " Madox (see Part II., *Proofs and Illustrations*, p. 752) is expressly said " to have been granted by a former Lord to the Tenant, and for which " military service was due. But there is nothing in the formula of " Marculfus implying military tenure.

2. "The transactions seem to be of a totally different nature; " the one, is a confirmation by the Lord of a sale previously made by " the Tenant; the other appears, on the face of it, to be a gratuitous " donation [surrender] on certain conditions: which was accepted and " fulfilled by the King, to whom the donation [surrender] was made.

3. "The word 'fidelis,' in Marculfus, proves nothing with respect " to the tenure of the land; every subject was in one sense a " 'fidelis.'"

4. "The transfer was in both cases effected by the same symbols. " But this proves nothing with respect to the identity of the two " transactions. The transfer *per festucam* was a common mode of " transferring property. It is the form prescribed by the Salic law, " for constituting an heir by a donation 'inter vivos'; after which " the heir was bound, by the same symbol, to give back the property

Part I. Ch. XVII.

the supposition that the rulers of the states and communities placed beneath the Frankish crown—the *Dukes*, and the *Counts*, or *Grafios*—were not hereditary, until so declared by a positive

Hereditary dignities, Dukes, Counts, &c.,

"to the person from whom he had received it, to be enjoyed by him "during his natural life."

To these arguments, of which I feel the force, I shall endeavour to reply,—

1. The age of the composition of the formulæ of Marculfus is uncertain; but military tenure in the time of Charlemagne was due from a Benefice by the common law; and there is every reason to suppose that it was equally due at all periods. The charter, or rather certificate, of Hawise de Gurney, relates to a real transaction during a period when the practice of the law was settled and regular. The words "scilicet illam terram quam Robertus de Gurneio pater meus ei pro servicio suo dedit," are mere surplusage, though inserted by the careful clerk for the purpose of better identifying the land. If we had an example of the *special* application of the Marculfian precedent to a *real transaction*, we might possibly find the title deduced with equal exactness; but being only a *general precedent*, such particularizations are quite out of the question. That the lands conveyed by the "Præceptum de Læsiwerpo" were of a beneficiary tenure, is only a matter of inference, but it is an inference most strongly supported by comparison with an instrument which *certainly* relates to the land held by a beneficiary tenure; and by deductions from the known laws and doctrines of beneficiary tenure. Until the inference is defeated by *other evidence equally strong*, it must stand as the most probable which can be afforded from existing evidence.

2. It cannot be said that the transactions are "totally different in nature." Whether the transfer be made upon *sale* for a valuable consideration, or whether it be gratuitous, the point at issue remains the same. The Marculfian surrender is not made to the King for his own use, but in order that the land may become vested in the King and then pass out from him. The King acts merely in a ministerial capacity, and receives the land from Adalbert, only that it may become vested in Lanfrid.

3. It will appear from the documents (see Part II., *Proofs and Illustrations*, p. 746) that "fidelis" is employed in similar documents as equivalent to Vassus; and we must take the term with reference to the subject-matter of the instrument.

4. It is fully admitted that the same *form* of tradition by symbols might be employed for *different* purposes: but in this instance I contend that they are employed for the *same* purpose, namely, in surrendering

law[a], enacted in the reign of Charles le Chauve, is contrary to the whole course and tenour of history. Are those who maintain this opinion ready to assert, that all the primeval chieftains of the various nations had been swept away? or, in sober earnest, to defend, by *historical proofs*, that most extraordinary theory, according to which the Franks knew no nobility, and recognized no hereditary authority save the throne[b]? I do not doubt but that many of the ancient Lines had become extinct. Clovis secured his ascendancy by the destruction of the Frankish

reasons for supposing that such dignities were composed of three *elements* of authority: or from a combination of three causes, the hereditary authority of the ancient ruling castes or families; the grants of delegated or official dignities to the reigning individuals of the families; and the conversion of the territory occupied by the people into a Benefice, held by the Senior as his patrimony.

the land to the Superior, to the intent that he might regrant it to a third person, as a new beneficiary tenant.

[a] The Capitulary of Kiersi has been considered by Guizot, Mably, and Sismondi, as enacted for this purpose, but it only relates to the *custody of the County during a minority* (see Part II., *Proofs and Illustrations*, p. 742).

It is singular that the French constitutional writers should have overlooked the real import of the law. To understand the clause quoted in the *Proofs and Illustrations*, we need only connect it with the other provisions which the Capitulary contains; and which relate to the custody of bishoprics and abbeys during a vacancy. The Emperor asks his "fideles" to advise him how such "honours" shall be administered as may become *open*, or fall into the hands of his Crown during his absence. Si, antequam redeamus, aliqui honores interim *aperti* fuerint, considerandum quid exinde agatur. [If, before we return, any honours shall fall *vacant*, it must be considered what shall be done therewith.] An answer is given concerning the custody of ecclesiastical benefices, and the Capitulum, without strictly following the recommendation or advice of the fideles, is adapted to the cases *both* of *lay benefices* and of *ecclesiastical "honours."*

[b] Such is the opinion of Sismondi (vol. ii. p. 87); and I hope that the candour and love of truth by which he is distinguished will induce him to reconsider the following passage, which, as far as I can judge, contains a theory wholly unsupported by ancient authority:—Les Francs n'avoient reconnu d'autre hérédité dans leur monarchie que celle du Trône. Ils avoient cru donner plus de stabilité à leurs institutions, en soustrayant la première dignité de l'état aux luttes de l'ambition et aux violences des partis; mais excepté les fonctions royales, *toutes les autres* devoient être reservées au plus digne. *Ils ne reconnoissent point de noblesse*; leurs Ducs et leurs Comtes étoient électifs, leurs généraux étoient choisis par les soldats, leurs grands juges ou maires par les hommes libres; *et aucun homme ne devoit tenir de ses pères aucun droit sur ses concitoyens.*[1]

Part I. Ch. XVII.

"Kings" who had been his compeers; and the political morality of the Merovingian sovereigns would readily suggest the useful and praiseworthy duty of securing the tranquillity of the state, by sacrificing any dangerous Senior, whenever a fit and convenient opportunity arose. Still, after making every allowance for the casualties whereby the ancient families may have been extinguished, there must have been a numerous body of chieftains, entitled, by ancestorial right, to the government of the nations and tribes constituting the Frankish empire. The privileges of such a chieftain, and his right to govern his own race, clan, or people, owed nought to the bounty of the king. Although the hereditary authority of those chieftains was permanently vested in their families, yet the ancient Teutonic policy modified and qualified all rights of inheritance; the authority was not absolutely fixed in the individual. No one except an "Agilolfing" could rule the Bavarian nation: but the duke was to be fit for the arduous task. He was required to judge the people in peace, march at the head of the army, spring on his steed, and brandish his lance. He was not to be blind, or deaf, or in anywise incapacitated from performing the behests of the Frankish king, his superior. And when the duke became incompetent to the discharge of his functions, he was relieved from a duty which he could no longer perform. The ducal authority was a trust. If the possessor could not act for the defence of his people, he was divested of his authority: but, though lost to the individual, the power still continued in the family. If the Bavarian duke could not exercise the powers of government, the son considered himself as the heir; and the law which prohibited such son from aspiring to the dignity so long as the father was able to rule[a], is a proof of his presumptive

Hereditary authority, anciently vested in the ruling castes or families, though not absolutely inhereditable. For instance, the Dux or King of the Bavarians was always of the family of the *Agilolfings*, but the individual was appointed by the Frankish King, with the approbation, or upon the nomination of the Bavarian nation.

The Duke was to reign if duly qualified; the son was prohibited from claiming the dignity *so long as his father was thus qualified*; thereby shewing that he *could* claim it when his father became incompetent to act. Compare with the appointment of Uchtred as Earl of Northumbria in the lifetime of his father, Waltheof.

Such authority and trust not to be withdrawn from the family; so that the children felt themselves aggrieved, if the honour was bestowed upon a stranger. (See II., p. 755.)

[a] Si quis filius ducis tam superbus vel stultus fuerit, ut patrem suum dehonestare voluerit, per consilium malignorum vel per fortiam, et regnum ejus auferre ab eo; *dum adhuc pater ejus potest judicio contendere, in exercitu ambulare, populum judicare, equum viriliter ascendere, arma sua vivaciter bajulare*, non est surdus, nec cæcus, in omnibus jussionem Regis potest implere, sciat se ille filius contra legem fecisse, et de *hereditate* patris sui esse dejectum, et nihil amplius ad eum pertinere de facultatibus patris sui: et hoc in potestate Regis vel patris sui erit, ut exiliet eum si vult, Lex Bajuvariorum, II. x. § 1. [If any son of a duke shall be so arrogant or foolish, as to wish to degrade his father, either by intrigue with the disaffected

title when a vacancy occurred. This was the general principle. It might be violated by the prerogative of the sovereign: the Pannonian marquisate was thus bestowed upon a stranger, to the prejudice of the children; and soon did they and their kinsmen avenge themselves upon the intruder. Yet the right of the son was only presumptive; and the authority of the superior could regulate or decide the succession. For, in those early times, power was not considered as a mere patrimony: submission was cheerfully rendered to the chieftain; but the people claimed the right of selecting their ruler amidst the members of the royal family. And the conflicting claims of competitors, decided by the sword when the tribe was independent, would, when they enjoyed the protection of a superior, be judged by his equity and wisdom.

(See II., p. 755.)

Right of confirming the subordinate chieftains or kings exercised by the paramount Sovereign. He would decide between competitors, &c. (as in the case of the Bavarian Duces, see II., p. 755, the Slavonian princes, &c. II., pp. 816–819).

The Frankish sovereign thus arbitrates between the rulers of the Slavi. He exerts his imperial authority; yet he consults the wishes of the people. He does not displace the ancient dynasty, but he ratifies the authority of the individual by whom it can be best exercised, and the elder heir submits without reluctance to the decree. If no extraordinary deviation from the usual mode of succession took place, the superior would still reserve to himself the right of recognizing the new ruler, and of enforcing the oaths of fealty. Acts of control, influence, or empire. thus exercised, are in no respect inconsistent with the *family-right* of the dependent. The Tartar Khan, placed beneath the sway of Constantinople or St. Petersburg, is confirmed by the Sultan or the Autocrat: he himself is not unwilling to be supported by the influence which the Firman or the Ukase thus imparts; and yet his lineage, traced up to the first Patriarch of the horde, is the real and constitutional foundation of his power. Similar facts are always reproducing themselves in history. Analogous causes always produce analogous effects. The present and the past afford a perpetual commentary upon each other. civilization, or the state of society so termed in common discourse,

or by force, and to take away his realm from him, *so long as his father can exercise discretion, march in the army, judge his people, mount a horse briskly, wield his weapons vigorously*, is not deaf or blind and can fulfil the bidding of the King in all things let that son know that he has acted against the law, and is cast out of his father's *inheritance*, and that he has no further claim on his father's means: and it is in the power of the King or his father to exile him if he wishes.]

Part I. Ch. XVII.

has made such little progress amongst the children of Adam, that, at this moment, we can find a place upon the geographical map, for every successive century. And by adverting to the current affairs of Turkey or Russia, we obtain a practical explanation of the policy of the Carlovingian empire. Adopting the theory which I have attempted to exemplify, we can have no difficulty in reconciling to each other the expressions, apparently contradictory, implying, or seeming to imply, that the duke was elected from the ducal race by the people, and also nominated by the Frankish king. Both modes concurred: there was an *election*, but not an uncontrolled election arising from the fluctuating opinion of the multitude. A *nomination*, but not an arbitrary nomination emanating, like the appointment of a viceroy, solely from the will of a monarch. The election was a deliberate proceeding, a power to be exercised when the ducal sceptre was forfeited by misconduct, or became vacant, either by infirmity or decease. In such case the people were called upon to judge the title of the heir; or they estimated his fitness to hold the station. The Frankish superior of the Agilolfings acted with the advice of the people, whose franchises had been protected; and the Bavarian people intimated their wishes in favour of one whom they apprehended would not be obnoxious to the Frankish king. Both parties, in short, exercised their rights by mutual understanding and compromise, without being bound by any strictly settled form.

Mode of reconciling various passages apparently conflicting, respecting the succession of dignities, some of which seem to imply that the Dukes, &c. were elected by the people, others, that they were nominated by the Sovereign.

Another source of authority increases the apparent incongruities which present themselves when we attempt to trace the history of territorial dignities. An hereditary chieftain, a *Ceancinnith*, could only have authority over his own tribe or clan. His patriarchal authority, resulting from the tie of blood and kindred, was *personal*, not *real*; and he possessed no right to sit in judgment upon a stranger. But the Frankish empire was peopled by various races, mixed and interspersed amongst each other. Over the Roman provincials, the king exercised a prerogative jurisdiction. He was their emperor. He must have been equally considered as the sovereign of any broken clan separated from its main stock, and of every tribe which had lost its ancient ruling family. The main form of the Roman government had been retained, and the "Gau" or Pagus, inhabited by a Teutonic people, was a Province in the eye of the law. The districts more purely Roman were governed by functionaries bearing the ducal or comitial title, and possessing dignities with

Hereditary chieftains appointed to the Roman comitial or ducal dignity (see above, pp. 266, 267), by the Frankish Sovereigns, which delegated authority became at last united to their patriarchal authority.

which the Barbarians had been long familiarized, having often been invested with them, during the Roman empire. The administrative authority of duke or count[a] was such as no one individual could derive from descent; for a Duke of the Alemanni could not be the born and natural ruler of Franks, Romans and Burgundians. His right to the third part of the fines payable to the sovereign, could only be deduced through the sovereign[b]. All such powers were granted by the sovereign's will, and could be resumed at his pleasure. But, unrestricted as the royal or imperial prerogative might appear according to the theory of government, practice, as usual, would restrain its extent. Functions so influential could not be granted indiscriminately and arbitrarily. They could only be entrusted to individuals capable of exercising them efficiently. And if we assume that the office was usually conferred upon the hereditary chieftain of the nation which predominated in the "Comitatus," until an inheritance had been established in the dignity by usage and custom, we shall have a full solution of the occasional discrepancies between the letter and the spirit of the law; the letter often assuming that the appointment of duke or count proceeds wholly from the sovereign, whilst the spirit of the law always points at an hereditary and transmissible authority.

Official dignities attracted by the hereditary or patrimonial authority (see above, p. 301).

Oath of fealty exacted upon the appointment of a dependent sovereign (see II., p. 819).

In addition to the foregoing sources of dependent authority, a third and last remains to be mentioned. The Heretog[c], or

[a] These titles appear to have been used without much distinction.

[b] This right was the usual perquisite of the Comitial dignity. (Caroli M. Cap. II. A.D. 812, § 2.)

[c] Præcipue regalis in hoc perfecta conlaudatur clemencia ut inter cunctum populum bonitas et vigilantia requiratur personarum. Nec facile cuilibet judiciariam convenit committere dignitatem, nisi prius fides seu strenuitas videatur esse probata. Ergo dum et fidem et utilitatem tuam videmur habere compertam, ideo tibi actionem Comitatûs, Ducatûs, Patritiatûs in pago illo, quem *antecessor* tuus *ille* usque nunc visus est egisse, tibi ad agendum regendumque commisimus; *ita ut semper erga regimen nostrum fidem inlibatam custodias*, et omnes populi ibidem commanentes, tam *Franci*, *Romani*, *Burgundiones*, quàm reliquæ nationes sub tuo regimine et gubernatione degant, et moderentur, et eos recto tramite secundùm legem et consuetudinem eorum regas; viduis et pupillis maximus defensor appareas; latronum et malefactorum scelera a te severissimè reprimantur: ut populi bene viventes sub tuo regimine gaudentes debeant consistere quieti, et

Part I. Ch. XVII.

senior of the ancient race, called to the government by the power of the superior, was required to enter into the engagement of the Antrustion: the office of duke or count was granted upon condition of faith or fealty, and the territory of the clan might be received by the ducal or comitial vassus in the new guise of a Benefice. He exchanged the rank of a patriarchal chieftain for the dependent relation of feudality, lord over the land of his own people, vassal in the court of his superior.

Feudal or beneficiary authority founded upon the surrenders made by the hereditary chieftains of the lands of their people, which they (i.e. the chieftains) received back as Benefices.

Of these transactions we possess an example, so clear, important and instructive, that there is no room for hypothesis or conjecture. Tassilo's history establishes every point required to elucidate the policy, which, in the age of Charlemagne, was

Tassilo III., Duke of the Bavarians. His history exemplifies the foregoing position, or the manner in which the hereditary chieftains became feudal princes.

quicquid de ipsa actione in fisci ditionibus speratur, per vosmetipsos annis singulis nostris ærariis inferatur, Marculfi Formulæ, lib. i. cap. 8. [Especially in this is the clemency of Kings extolled as perfect, when among the whole people justice and vigilance is required of dignitaries. Nor is it fitting to commit judicial office to any man lightly, unless his fidelity and activity appear to be proved. Therefore, since we have proved your fidelity and usefulness, so we have committed to you the office of Duke or Count or Patron in that district, which *N.* your *ancestor* has hitherto performed, to be performed and regulated by you; *provided that you always keep unblemished fealty to our rule*, and that you govern in the right path according to their law and custom, all the peoples dwelling therein, both *Franks* and *Romans*, and *Burgundians*, and the other nations living and controlled under your rule and government; to widows and minors shew yourself a mighty defender: let the crimes of robbers and evil-doers be severely repressed by you; so that the peoples, living well and rejoicing under your rule, should remain in peace: and whatever from that government is anticipated for the riches of our treasury, shall be paid by yourself every year to our treasurers.]

Guizot says, l'amovibilité des Comtes est attesté par tous les monumens de la première race. La formule de Marculf pour la collation de ces emplois le prouve directement.[1] But with submission to this learned writer, the form proves no such thing. Without laying too much stress upon the word "antecessor," which implies predecessor as well as *ancestor*, it is obvious that nothing can be collected from the diploma, except that it is a new appointment *in form*; and that the question *how* such new appointment was granted or obtained is as open as before. No one, by reading a writ of summons to an English peer, could collect from the instrument itself that it was issued, not *ex gratiâ*, but of right, and that the Crown has no power of withholding it.

becoming the leading principle of the empire. As declared by the law of the Bavarians, the first Tassilo, the Agilolfing, was confirmed in the royal authority by Childebert, the king of the predominant nation. And, at the distance of more than a century, we find Odilo, the descendant of Tassilo, possessing his duchy by the concession or grant of Charles Martel, the virtual ruler of the Frankish monarchy. Hiltrudis, the daughter of Charles, having fled to Bavaria, she became the wife of Odilo, much against the will of her powerful brothers, Pepin and Carloman: and the attempt made by Odilo to free himself from the dominion of the Franks, displays the hostile feelings created by this alliance. But Odilo was compelled to submit; his niece Swanhilda had previously become the consort[a] of Charles, and a pacification ensued[b].

594, 596. Tassilo I., the Agilolfing appointed, i.e. confirmed, in his ducal authority by Childebert. (See II., p. 756.)

Odilo, his descendant, in like manner by Charles Martel. (See II., p. 756.)

Odilo marries Hiltrudis, daughter of Charles Martel, against the will of her brothers Pepin and Carloman. (See II., p. 756).

Swanhilda, niece of Odilo, the consort of Charles Martel, by whom she has Grifo.

Tassilo, the son of Odilo, was called to his father's authority, but Grifo, the son of Swanhilda by Charles Martel, contested the dominion: probably as an Agilolfing by the female line, for, as we shall afterwards see, a daughter[c] might be considered as possessing, or at least transmitting, a right to the dignity. Pepin continued to support his nephew Tassilo in preference to Grifo, his brother. Tassilo attends the court of his Uncle and sovereign, and follows him to the wars; and now Tassilo appears before his lord. He commends himself to the sovereign as an Antrustion or vassal, performing homage according to the ancient custom of the Franks, placing his hands within the hands of his superior. The oath of fealty, taken upon the relics of the apostles of Gaul, confirms the promise; and all the chieftains of the Bavarian clans and tribes enter into the same engagements[d]. Compelled again to aid and co-operate against the Gascons, Tassilo violates his fealty or allegiance; deserts from the army, and retreats to his own country. At the instigation of his wife, Liutberga, the daughter of the Lombard Desiderius, Tassilo rebels against the mighty Charlemagne. Pursuant to the mediation of the pope, Tassilo is allowed to repeat his oath, and twelve hostages

748. Tassilo III., son of Odilo by Hiltrudis, succeeds to his father's authority; expelled by Grifo; restored by Pepin. (See II., p. 757.)

754, 755, 757. Tassilo attends the Champ de Mars, performs military service; commends himself to Pepin, and performs homage; takes the oath of fealty to Pepin, and his sons Charles and Carloman (see II., p. 758) "in vassatico se commendans per manus, fidelitatem promisit Regi Pipino, &c., sicut vassus recta mente et firma devotione per justitiam domino suo esse deberet."[1]

[a] Uncertain whether as wife or concubine.

[b] Ann. Eginhardi, Bouquet, vol. v. p. 196. Matrem habuit, nomine *Suuanhildam* neptim *Odilonis* Ducis *Bajoariorum*. [His mother's name was *Swanhilda*, niece of *Odilo*, Duke of the *Bavarians*.]

[c] See below, p. 448.

[d] The performance of homage in 757, was only a renewal of a former act: Tassilo was now required to perform fealty, not only to Pepin, but to Pepin's sons.

Part I. Ch. XVII.

are given to secure his fealty. The promises thus again renewed, are again violated. The pope again attempts to mediate, and denounces his anathema against the perjured vassal. Charlemagne assembles his army, and surrounds the rebel, who has refused to obey the summons of his superior. Tassilo, deserted by his own subjects, who acknowledge the justice of the Frankish claims, humbly appears before the emperor. Surrendering his Benefice, by the delivery of the staff, he again becomes the vassal of Charlemagne, and twelve chosen hostages, besides his son Theodo, are delivered into the hands of the emperor as securities for his obedience.

763, 780. Tassilo violates his oath, rebels. Papal mediation. Charlemagne leads his army against Tassilo. (See II., pp. 760, 762.)

Tassilo surrenders his Benefice by the delivery of the staff, being the tradition "per fustem et baculum"[1] (see above, p. 113, and see II., p. 325), as still used in Scotland.

Soon afterwards Tassilo is summoned, amongst the other vassals of Charlemagne, to the Placitum held in the palace of Ingelheim. The Bavarians, his subjects, accuse him of treason. Tassilo, who incited the Avars to invade the empire, has conspired against the life of his sovereign. The criminal thus arraigned made no defence. His peers condemned him to death: but the sagacious clemency of Charlemagne now interposed; and the emperor solicited and obtained the pardon of the offender. Tassilo appeared before the council, and, by the ordinary ceremony in such cases, surrendered up all the rights which he or his issue, *male or female*, had in the duchy of Bavaria. Withdrawn from the public gaze, Tassilo was allowed to end his life in monastic tranquillity; and the extinction of the political existence of the Agilolfings was insured by compelling his banished sons to retire in like manner from the dangers of the world.

788. Tassilo, pursuant to the command of Charlemagne, attends, like the other Vassi of the crown, in the general Placitum at Ingelheim: accused of various acts of treason; condemned to death by his Peers; pardoned by Charlemagne; surrenders his duchy by the ceremony of Guerpition (see II., p. 741), together with all the right which he, his sons, or his daughters, had or might have in the same. (id., p. 770.)

The authority of the Dukes and Counts of the Carlovingian Empire, to be therefore considered as composed of the three elements before mentioned, an hereditary or patriarchal authority (i.e. that of the chieftain of a clan), an official authority (i.e. that of a governor or lord-lieutenant), and a feudal authority.

Let us, therefore, consider the authority possessed by a dependent chieftain, whosoever he was, or however he may have been denominated, as composed of *three* concurrent elements. He was the *Ceancinnith* or *Pencenedyl* of his clan, the Comes of the Province, appointed by the precept or patent of the emperor, and the vassus, the "man" or homager of the superior, by whose grant he holds the Benefice upon which his subjects dwell. No one of these elements imparts an indefeasible and irresponsible authority to the possessor: no one is absolutely dependent upon the prerogative of the imperial sovereign. The chieftain's rank or dignity can never be confirmed without the intervention of some other party; and yet the source whence such confirmation is to be obtained, is always controlled by law, or by custom equivalent to law. The abuse of power, the passions of the people, or the state-policy of the lord paramount, might deprive an

inefficient or unfortunate ruler of his sway; but the right remained in all ordinary cases to his family: nor could it be lawfully extinguished otherwise than in legal form. The delegated functions, borrowed from the Roman administration, were granted or withheld by the successor of the Cæsars, but the emperor could rarely separate them from the patriarchal right. The territorial county, as a Benefice, reverted to the superior upon the death of the tenant, but the law[a] insured that the Feud should be safely kept and guarded during the minority of the heir; and when he had attained the age enabling him to perform the duties and enter into the engagements of Antrustionship, it was deemed an act of most flagrant injustice to deny him the "Honour" which he claimed by reason of ancestry and lineage.

(See II., p. 755.)

Rights of the hereditary chieftains not so indefeasible or absolute as to render their accession to territorial dignities a mere matter of course.

But there were counteracting conditions. Strong as the right of the chieftain might be according to law, and stronger still according to feeling, the confirmation of his authority could not be required as a matter of course. The emperor did always display his power. He was fairly authorized to pause before granting the investiture. Conditions or covenants might be imposed. The parties might treat and negociate on unequal terms. An absolute refusal to restore the Benefice would be in subversion of the policy prevailing in the realm: yet the wide margin of prerogative, and the pre-eminence of the throne, would afford scope and means for evading the fulfilment of the compact; or for defeating the pretensions of the vassal. And the monk, dazzled by the splendour of the crown, or the courtier, anxious to flatter his royal patron, might, without any direct violation of the truth, so represent the transaction, as to countenance the theory which I have attempted, and I hope successfully, to refute, that in the Frankish monarchy the king was the only hereditary functionary, and that no man possessed any ancestorial right over his fellow-citizens.

(See Sismondi's opinion, above, p. 441.)

The rank of the Dukes and Counts of the Carlovingian Empire elucidated by comparing them to an Earl of Argyle,

Although the parallel will not hold good in any of the minor details, a Carlovingian duke or count may be compared to an Earl of Argyle in the sixteenth century. The earl, according to the law of the state, holds his widely extended baronies by virtue of royal charters, and by the investiture received from his sovereign. His *Saxon* honour is founded upon his patent, and his seat in parliament is an obligation annexed to the dignity

[a] The Capitulary of Kiersi (see above, p. 441 and Part II., *Proofs and Illustrations*, p. 742).

Part I. Ch. XVII.

which compels him to obey the summons of the king. The earl's judicial functions, in like manner, are deduced from royal concession; and, in the lawful judgment of court and council, his lands, possessions, powers, rank and station are all derived from the crown, or created by the sovereign prerogative. But, follow M'Callum-mor into his own country, ask, when you are in the castle of Inverary, from whence the pride of the *Ceancinnith* is derived? What cares the Sennachie for the waxen seal and the parchment scroll? Would the headsman be less ready to fulfil the mandate of his stern superior, if he were told that the commission of the Lord Justice-General had not been renewed? Or will the clans refuse their tribute of grain and cattle to the Son of Diarmid, until "Sir Colin Campbell" is served heir by a jury, and they have an office copy of the "retour of the Brieve" in the Lowland Chancery? All the rights of the Scottish peer are legal, strictly legal, yet they are the mere creatures and creations of the law. But the powers and prerogatives of the Gaelic chieftain may be subsisting in full force, though unrecognized by the Lords of Session, and perhaps exercised in open defiance of the law: and these are the real support and stay of his influence and dignity. It may be the province of the ethical philosopher to inquire whether a right sanctioned by the law, and unrecognized by the people, is better or worse according to the principles of natural equity, than a right, obeyed and acknowledged by the people, though unsanctioned by the law. But it is evident, that the same transaction which the opinion of the advocate condemns as an illegal intrusion, would be lauded by the bard as a brave and valiant assertion of ancestorial right against usurpation and tyranny.

whose consequence and dignity arose from his being the chief of a clan, holding baronies by feudal tenure, created an Earl by patent, and also exercising the office of Lord Justice-General by virtue of a royal grant.

It is probable, that the usage of imparting the Comitial authorities by delegation was disused soon after the reign of Charlemagne. The various nations were becoming united into one populacy: and the powers which emanated from the imperial diploma, either became unnecessary, or were considered, by usage, as annexed to the territorial dignity, although no express concession had been made.

Effects of the feudal system in increasing the political power of the Sovereign-Superior.

Introduced into the general policy of government, the Feudal principle, for so we must consent to call the system, gave a much greater degree of regularity to the sovereign power than it had hitherto possessed. The dominion of the Frankish King or Emperor was legalized. Mere political superiority is jealous and undefined. A specific relationship was now created between the

sovereign and the vassal, founded upon well-known principles, and carrying with it obligations, the nature whereof was ascertained. Tassilo, if he had rebelled *before* he became the man of Pepin, might have been treated as an enemy, Bavaria ravaged, and the Agilolfing consigned to captivity or to death. But the vengeance inflicted upon him would only have been the effect of overweening power, the arm of the stronger triumphing over the weaker, without any semblance of law. Tassilo, rebelling *after* he had confessed himself the vassus of Pepin, could be made to appear in a very different character. He had violated an oath, forfeited his *Trust*, and might, not only according to law, but in the opinion of the world, be stigmatized as a traitor towards his superior. Furthermore, the power of the Church came in aid. The anathema was fulminated against the perjured Antrustion. His assailants were absolved from the guilt of bloodshed. The Franks were told that conscience justified their hostility. Unprovoked aggression is odious even amongst the most barbarous tribes. The superior acquired a colour of right. He was vindicated by the law of the Church; the law of the Church was then the law of nations: and public opinion, in all times the strongest support to the monarch, was guided by the sanction thus given to the war.

Corresponding gain of power by the Vassal-Sovereign.

If Pepin or Charlemagne gained much in authority by this transaction, corresponding advantages resulted also to Tassilo, or to any other *Vassal-Senior* under similar circumstances. The hereditary rights, vested in the blood of the chieftain, gave him a dominion over the persons of his tribe, but none over the soil. Each Sept claimed the common lands of the *Gau* upon which they were settled. Each individual held his *Odal* in absolute property. By accepting investiture from the hands of his superior, Tassilo acknowledged his own inferiority; but when he consented to hold a beneficiary estate, he acquired as much, perhaps more, dominion over his immediate inferiors, than he had lost by the surrender of his independence. In addition to his authority as Duke of the Bavarians, he now stood as Duke of Bavaria, a new principle of influence and power was developed; and from *his* vassals the vassal would claim the same kind of obedience which he rendered. True it is that Tassilo, as the Heretog or leader of the Bavarians, had no right whatever to surrender the territories of his people. But the subordinate chieftains would each profit in proportion over their own septs and minor clans, and therefore they would be bribed to concur in the transaction. The protection imparted to the whole nation

Part I. Ch. XVII.

might reconcile the Bavarians to the change; and the oaths given by them to the suzerain rendered them parties to the contract, to the new compact upon which the social existence of their state was grounded.

If the vassus Tassilo, I continue to use his name, though of course the reasoning applies to any other "senior" under similar circumstances, was attacked by an enemy, he would claim the protection of the emperor as a right; he was entitled to this safeguard by virtue of their mutual bond. If the Bavarians opposed his authority, Tassilo would equally solicit the co-operation of the emperor to aid him in chastising the disobedience of their common subjects. These consequences must have been duly appreciated when he knelt and performed homage. But the Bavarians might equally discover the nature of their new position. The subject who conspired against Tassilo the duke, forfeited life and property; and any resistance to the duke's authority would easily involve the oppositionist in the guilt of rebellion. But whilst the person of *Tassilo the Agilolfing* was sacred, *Tassilo the Vassus* was liable to the judgment of Charlemagne and his compeers. And the faithful Bavarians, by standing forth as the accusers of Tassilo in the palace of Ingelheim, could insure his abdication with far more ease and certainty, than if the war-cry of rebellion had echoed from border unto border.

(See II., p. 772, no. 14.)

(See II., p. 769.)

Extension of the principles of Antrustionship and Beneficiary law. (See II., pp. 772–775.)

In the earlier periods of Frankish history, the principles deduced from the combination of Antrustionship and the Roman Beneficiary law were applied only to the immediate retainers of the prince. By the means before noticed they extended rapidly, and became the maxims of the crown. On every occasion, oaths, equivalent in import to the engagement of the ancient Antrustion, were renewed. The Gascons and the Slavonians were compelled to acknowledge themselves the Fideles or the homagers of the Frankish kings. A personal homage, or the promise of subjection, as the man oweth of right to his lord, was exacted from the subjects of the emperor; and when fully inaugurated in his dominions, the several states composing the empire severally accepted him as their lord, protector, and defender[a]. The Burgundian, the Aquitanian, and all the

At the inauguration of the Emperor, the several nations composing his Empire accept him as their Protector and Defender. (Compare with the submission of the East Anglians, &c. to Egbert, see II., p. 346.)

[a] For the oath of fealty and homage taken to Charlemagne, see Part II., *Proofs and Illustrations*, p. 776.

Charles le Chauve was first accepted as *Protector* by the Prelates,

various races who submitted to his sway, entered into those engagements which placed the crown at the summit of the civil hierarchy. Part I. Ch. XVII.

Earls, and Optimates of the kingdom of Italy, assembled in the palace of Pavia.

Gloriosissimo et a Deo coronato, magno et pacifico Imperatori, Domno nostro *Karolo* perpetuo Augusto, nos quidem omnes Episcopi, Abbates, Comites ac reliqui qui nobiscum convenerunt *Italici* regni Optimates, quorum nomina generaliter subter habentur inserta, perpetuam optant prosperitatem et pacem. Jam quia divina pietas vos beatorum principum Apostolorum Petri et Pauli interventione, per vicarium ipsorum, Domnum videlicet *Johannem* summum Pontificem et universalem Papam spiritualemque patrem vestrum ad profectum sanctæ Dei ecclesiæ nostrorumque omnium invitavit, et ad imperiale culmen Sancti Spiritûs judicio provexit, nos unanimiter vos *Protectorem*, Dominum ac *Defensorem* omnium nostrum eligimus. [To him who is most glorious and crowned by God, to the great and pacific Emperor, to our Lord *Charles*, for ever Augustus, we, all the Bishops, Abbots and Counts and the rest of the nobles of the *Italian* kingdom, who are assembled with us, whose names are written in full below, wish perpetual prosperity and peace. Because already the mercy of God, through the intervention of the Blessed Peter and Paul, princes of the Apostles, through their vicar, to wit, our Lord *John*, the sovereign Pontiff and the universal Pope, and your spiritual father, for the advancement of Holy Church and of us all, has called and raised you to the imperial throne by the judgment of the Holy Spirit, we do all unanimously choose you as the *Protector*, Lord and *Defender* of us all.]

The Cisalpine nations, the inhabitants of France (or Austrasia), Burgundy, Aquitaine, Septimania, Neustria, and of the Roman "province," then followed the example of the kingdom of Italy.

Confirmatio *Cisalpinorum*.

Sicut Domnus *Johannes* Apostolicus et universalis Papa primò *Romæ* elegit atque sacra unctione constituit, omnesque *Italici* regni Episcopi, Abbates, Comites et reliqui omnes qui cum illis convenerunt, Domnum nostrum gloriosum Imperatorem *Karolum* Augustum unanimi devotione elegerunt sibi *protectorem* ac *defensorem* esse: ita et nos, qui de *Francia* et *Burgundia*, *Acquitania*, *Septimania*, *Neustria* ac *Provincia*, pridie Kalendas Julii in loco qui dicitur *Pontigonis*, anno xxxii in *Francia*, ac Imperii primo, jussu ejusdem Domni et gloriosi Augusti convenimus, pari consensu ac concordi devotione eligimus et confirmamus, Baluze, vol. ii. p. 238. [The Confirmation *by those who dwell on this side of the Alps*. Even as Lord *John*, the Apostolic and

Part I. Ch. XVII.

The *Champ de Mars*, afterwards the *Champ de Mai*, originally a military convention, similar to the armed council of the Gauls described by Cæsar. (See above, p. 90.)

An assembly of the Frankish warriors, originally convened on the first of March, and afterwards on the first of May[a], is familiarly known to have existed from the first establishment of the monarchy. These assemblies however declined in importance until the administration of the Mayors of the Palace, when they were revived, and with greater efficacy[b]. In this "Weaponshaw" the sovereign marshalled and inspected his sturdy warriors. The

Universal Pope first at *Rome* chose and consecrated our glorious lord *Charles* to be Emperor and Augustus, and all the Bishops, Abbots and Counts and all the rest of the *Italian* kingdom who had assembled with them, with unanimous devotion, elected him to be their *protector* and *defender*, so we also, the people of *France* and *Burgundy*, of *Aquitaine* and *Septimania*, of *Neustria* and *Provence*, have assembled on the 30th day of June in his thirty-second year in *France*, and in the first year of his empire, at the place which is called *Ponthion*, by the order of the same lord and glorious Augustus, and with the like consent and agreement have chosen him and do hereby confirm him as our Lord.]

Who were the reliqui? possibly the Scabini, in the Teutonic communities, and the municipal magistrates of the cities of the other nations. Those who acknowledged the King as Protector and Defender became at once his Antrustions.

[a] Mutaverunt Martis Campum in mense Madio, Ann. Petav. ad ann. 755, Bouquet, vol. v. p. 13. [They changed the camp of March to the month of May.]

[b] Depuis le règne des petits-fils de *Clovis* la nation avoit laissé tomber en désuetude les conciles où elle avoit autrefois décidé de la paix, de la guerre, des lois et du gouvernement. Les assemblées nationales paroissent avoir été fort négligées sous les derniers Rois *Merovingiens*....On ne peut pas affirmer que ces assemblées n'eussent plus lieu, mais pendant un long espace de temps il ne nous reste aucun monument de leur existence, Sismondi, vol. ii. pp. 97, 174.[1]

This however is not correct, for Eginhard expressly states, that the Merovingian Kings attended the Conventus, qui annuatim ob Regni utilitatem celebrabatur, Bouquet, vol. v. p. 89 [which was held annually for the advantage of the Realm]; and it is difficult to distinguish the Conventus from the Champ de Mars. I must here observe, that Guizot (Essais sur l'Histoire de France) has been my constant guide in tracing the history of the political institutions of France, and though I differ from him on some important points, I trust that he will allow me to make this general acknowledgment of my obligations to him.

well-known adventure of the "Vase of Soissons" took place in such a meeting. According to the original constitution, none but the Franks could attend the armed Folkmoot; and if we are to adopt the expressions employed by Childebert and Pepin[a] in their literal sense, all the lieges gave suit and service before the sovereign.

A law for the Franks could be made only by the Franks; but it is most probable, that the Merovingian king was empowered to convene the ancient nobles of the other races whom he governed, in the same manner. Perhaps he would meet his Frankish followers on the one day, and the Romanized Celts on the next. In the subsequent period, the vassus, whatever might be his nation, was bound to attend the council and array[b], as if he had been the natural-born subject of the Frankish king. This obligation would result from the vassal's engagement. By his Antrustionship, he was admitted into the Frankish nation. Bound to his *Senior* both in peace and in war, the *Trust* imposed upon him, was to be displayed as well in council as in the field; and therefore he could not be absent from the Convention in which the plan of the ensuing campaign was to be arranged. Until affected by the altering policy of the realm, and in the very early ages of the monarchy, perhaps for some few years

(See above, p. 432, and II., pp. 776–778.)

[a] As in the two following examples. Childebert's Capitulary (circa 595) is the first in which any notice is taken of legislative assemblies.

Childebertus Rex *Francorum*, vir inluster, cum in Dei nomine *nos omnes*, Kalendas Martias de quascumque conditiones una cum nostris optimatibus pertractavimus, ad unumquemque notitiam volumus pervenire, &c., Baluze, vol. i. p. 18. [We, the illustrious *Childebert*, King of the *Franks*, wish to bring to the notice of everyone, that, whereas *we all*, in the name of God, on the first of March, took counsel with our nobles concerning all matters whatsoever, &c.]

754. Evoluto anno, præfatus Rex *Pipinus*, ad Kalendas Martias *omnes Francos*, sicut mos *Francorum* est, *Bernaco* villa publica, ad se venire præcepit. Initoque consilio *cum proceribus* suis, &c., Chron. Fredegar. Bouquet, vol. v. p. 2. [A.D. 754. In the course of the year, the aforesaid King *Pepin*, ordered *all the Franks* to attend him at the town of *Bernay*[1], on the first of March, as is the custom of the *Franks*. And there he began to take counsel *with his nobles*, &c., Chronicle of Frédégaire.]

[b] Thus in the capacity of Vassus, Tassilo gave his attendance (Part II., *Proofs and Illustrations*, pp. 758 and 761) in the Champ de Mars and in the Placitum.

Part I. Ch. XVII.

after Clovis had been hailed as Augustus, the Champ de Mars seems to have been generally held only for the discussion of those affairs which were either purely military, or connected with military policy. But the King of the Franks established in Gaul, the Vicar of the Empire, ruling the Roman population with the rights of the Cæsars, would assert a prerogative over his followers unknown to Meroveus. Soon did the sovereign learn to render these assemblies the useful means of increasing not only the royal power, but the royal revenue. It was in the Champ de Mars that the Frank offered his gratuitous gift to the sovereign. A very slight acquaintance with the mysteries of finance will leave us little room to doubt, but that these tributes of respect were, in effect, a tax upon the members of the privileged order[a]. On the Kalends of the month, in the spring season, the

Gifts presented to the Kings in the Champ de Mars.

Such gifts equivalent to a permanent taxation of the Vassi.

[a] It was in the Champ de Mars that the long-haired kings were accustomed to receive these gifts (Ann. Fuld., Bouquet, vol. ii. p. 676, and Guizot, p. 320). Hincmar indicates that the amount of the gifts was settled in the select council by the Seniors and principal councillors.

Consuetudo autem tunc temporis talis erat, ut non sæpius, sed bis in anno placita duo tenerentur. Unum, quando ordinabatur status totius regni ad anni vertentis spacium, quod ordinatum nullus eventus rerum, nisi summa necessitas quæ similiter toto regno incumbebat, mutabatur. In quo placito generalitas universorum majorum tam clericorum quam laicorum conveniebat; seniores, propter consilium ordinandum; minores, propter idem consilium suscipiendum, et interdum pariter tractandum et non ex potestate, sed ex proprio mentis intellectu vel sententia confirmandum. Cæterum autem propter dona generaliter danda, aliud placitum cum senioribus tantum et præcipuis consiliariis habebatur: in quo jam futuri anni status tractari incipiebatur, si forte talia aliqua se præmonstrabant, pro quibus necesse erat præmeditando ordinare, si quid mox transacto anno priore incumberet, pro quo anticipando aliquid statuere aut providere necessitas esset: verbi gratia, si inter Marchisos in qualibet regni parte ad aliud tempus dextræ datæ fuissent, quid mox post dextras exactas agendum esset, utrum renovandæ, an finiendæ essent. Juxtà, cæterarum partium imminentibus rixa et pace, ut secundum id, quod tunc temporis ratio poscebat (si ex una parte hinc aut inde vel facienda vel toleranda inquietudo necessario incumbebat) ex aliis partibus tranquillitas ordinaretur, Bouquet, vol. ix. p. 769. [Now at that time, the custom was such that the assemblies were held twice in the year and not more frequently. One assembly met, when the administration of the kingdom was settled for the current year, and

Lenten time, the assembly was held by usage. Every vassus appeared in his place, and the sovereign attended to receive the offering. The donation would find its way into the treasury with as much regularity, as if it had been imposed upon the head of each vassus; and when the Merovingian himself became a mere pageant or phantom of power, the inspection exercised by the Mayor of the Palace would ensure the punctual payment of the Benevolence due to the long-haired King. After the reign of Charlemagne, we find that special assemblies were summoned for the purpose of enabling the vassi to testify their *gratitude*. The same burden was imposed upon the clergy. The abbess despatched her messenger, bearing the voluntary offering of the convent; and the names of the monasteries, bound to render gifts and military service, gifts without military service, or prayers without either gifts or military service, enrolled in one and the same record[a], shew that, in every case, the right to the

this, when settled, was modified for no subsequent occurrence, save such as weighed at the same time on the whole realm. And in this assembly there met all the great men, both cleric and lay; the elders, to give counsel; the younger men, to receive the same counsel, and occasionally to discuss it like the others, and to confirm it, not as of compulsion, but as the result of their own thought and opinion. But the other assembly was of the elders only and the chief councillors, for the receipt of gifts from everyone; and at this they held a preliminary discussion of the affairs of the coming year, if perchance, any such presented themselves for which it was necessary to take forethought, or if any matter from the year before, which was now drawing to a close, was pressing, for which it was necessary to make any decree or provision before the next assembly; for instance, if between the Marcher lords in any part of the kingdom truce had been made at any time, it was necessary to discuss what should be done after the truce had expired, whether it should be renewed or put an end to. Similarly, if strife or peace appeared in other parts, it was necessary to take steps so that tranquillity might be assured in other parts, according to what was required by reason at that time, if, either here or there it was necessary that unrest should be caused or tolerated.]

Numerous passages occur like the following: mense Septembri ad indictum placitum, Wormatiam venit, in quo cum dona annualia more solito reciperet, &c., Ann. Bertin. 836, Bouquet, vol. vi. p. 198. [In the month of September, he came to the appointed assembly at Worms, where, in the wonted manner, he received the annual gifts.]

[a] The notice of the services due from the monasteries, as mentioned

Aid had become a royal prerogative, against which no excuse could be allowed.

Constituency of the legislative assemblies of the Franks.

The few edicts promulgated anterior to the reign of Charlemagne do not enable us to decide with certainty as to the constituency of the legislative assembly. In the earliest muniments, the attendance of the clergy is not always mentioned; and it has been supposed by some distinguished writers, that the ecclesiastics did not enter into the Conventus, Diet, or General "Placitum," until the reign of Pepin[a].

in the text, was drawn up or recorded by command of Louis le Débonnaire, in the Conventus held at Aix-la-Chapelle, A.D. 817.

Anno Incarnationis Domini nostri Jesu Christi dcccxvii, *Hludovicus* Serenissimus *Augustus*, divinâ ordinante providentiâ, conventum fecit apud *Aquis* sedem regiam Episcoporum, Abbatum, seu totius Senatus *Francorum*: ubi inter cæteras dispositiones Imperii, statuit atque constitutum scribere fecit quæ monasteria in regno vel imperio suo dona et militiam facere possunt, quæ sola dona sine militia, quæ vero nec dona nec militiam, sed solas orationes pro salute Imperatoris vel filiorum ejus et stabilitate Imperii, Baluze, vol. i. p. 590. [In the year 817 from the Incarnation of our Lord Jesus Christ, *Louis*, the most serene *Augustus*, in the order of divine providence, held at *Aix*, the royal city, an assembly of Bishops and Abbots and of the whole of the Senate of the *Franks*; where, among other arrangements for the Empire, he determined, and ordered to be set down in writing, what monasteries in his realm or empire, can give gifts and perform military service, which gifts alone without military service, which neither gifts nor military service, but should only pray for the safety of the Emperor and his sons and the stability of the Empire.]

Fourteen monasteries rendered "dona et militia"; sixteen "dona sine militia"; and fifty-four "orationes." All the monasteries of Aquitaine, Septimania, Toulouse and Vasconia are in this last division.

[a] *Pepin* et *Carloman* apelèrent les prélats à ces assemblées, et ceux-ci s'y trouvèrent bientôt les maîtres. La constitution de l'état fut changée en entier par cette seule innovation, à laquelle un peuple dévot ne vit aucune raison de se refuser, et les *Champs de Mars* des soldats devinrent de synodes d'évêques. Les prélats, en effet, introduisirent dans ces assemblées l'usage de la langue latine et celui des longs discours. Ils les soumirent toutes les questions de dogme, de discipline ecclésiastique et de controverse, auxquelles les soldats Francs ne pouvoient rien comprendre. Etrangers à la langue, à la science théologique, et aux formes de délibération usitées par les prélats, leur rôle devenoit absolument oisif. On ne contestoit point leurs droits,

But this opinion cannot be easily received as correct; and though the clergy did not mix with the warriors[a], we must not hastily infer that they were deprived of their share in the administration of the state. The Church formed an integral part of the community. It is as contrary to the evidence furnished by the general tenour of history to suppose, that Childebert or Clothaire acted without the advice of their bishops, as to picture the prelates addressing long speeches in Latin to the Frankish warriors. The supposition, and also the picture, have been both suggested by a view of the middle ages in which fancy has a greater share than accuracy. The ecclesiastical synods existed concurrently with the civil legislatures. And the greater part of the canons of Spain and the Gauls, and Germany, were decreed in councils held in and during, or in prospect of, the session of these assemblies, which we may style, though somewhat prematurely, the parliaments of the kingdoms[b]. But, as I have before observed, the clergy, though they participated or concurred in the acts of the "worldly law," constituted a distinct house or branch, not united into one body with the secular Legislatures.

Clergy, not united into one body with the temporal legislature, but constituting a distinct house or branch.

Under the Carlovingian government, the general administration of the empire was exercised in the general "Placita," held regularly at least once a year. Much obscurity involves the

General Placita of the Carlovingian ages probably formed by the *concurrent session of various courts, tribunals, and legislative bodies*

mais on les chassoit par l'ennui du lieu même où ils avoient régné.... Les prélats, qui sans révolution, sans que la nation s'aperçût d'avoir perdu ses droits, se trouvoient tout à coup dépositaires de toute la puissance législative, par le seul fait de leur admission dans le conseil des gens de guerre, ne négligèrent point de donner à leurs décrets une sanction puissante en organisant les formes et les conséquences de l'excommunication, Sismondi, vol. ii. pp. 175, 181.[1]

[a] And whether they sat within the same building or not, they were always distinctly severed from the laity. In prima turma consederunt Episcopi cum quibusdam notariis; in alia vero Abbates et Monachi; in tertia denique turma sederunt Comites et Judices in mundanis legibus decertantes, vulgi justitias perquirentes, Concilium Moguntiacum, 848, Sirmond, vol. ii. p. 275. [In the first troop sat the Bishops with certain notaries; in the second, the Abbots and Monks; in the third, sat the Counts and the Judges holding disputations about the secular laws and investigating the rights of the people.]

[b] So that Fleury considers the civil character of these councils as preponderating over their proper ecclesiastical character. Ces assemblées étoient essentiellement Parlemens, et Conciles par occasion, Hist. Eccl. vol. i. 3, p. 21.[2]

Part I Ch. XVII.

origin of these conventions. Probably they should be distinguished from the Champ de Mai, though the last-mentioned assembly was certainly a branch of the Placita. It should seem that the Placita were formed by a union of different courts, tribunals and legislative assemblies. The monarch summoned his great officers at the time when the vassi came together. The relics of the Roman Provincial Councils may have been convened when their fellow-subjects were congregated before the king. The manner in which a Conventus or General Placitum is represented by historians, would depend upon the predominant nature of the business transacted therein. If held preparatory to an expedition or *Herrbann*, against the Slavi or the Avars, we shall be told that it was a *Champ de Mai*, because the prelates dispersed after mass had been sung and the tumult of war imposed silence upon the lawgiver. A heresy is to be condemned, and in the censure passed upon the innovator, it is not at all necessary to disclose the fact, that whilst the Fathers sat in *Council* in the Basilica of Saint Martin, the sovereign was inspecting his cavalry without the walls of the city. And a decree might be enacted by the Frankish king, which, though promulgated in the military assembly, had been advised by the vassi in their character of counsellors of the throne. The Placitum was composed of different Houses, Orders and Branches; and if we suppose that in our English Parliament, the Judges, and the Lords Spiritual and the Lords Temporal, and the Commons are in great measure independent of each other, and not invariably summoned to meet at one time and place—and such was the course of parliament in the earlier ages of the constitution—we shall have a general idea of the conformation of the Legislature of the Frankish empire.

brought together generally (but not invariably) at the same time.

(Chap. X.)

The same kind of assembly might be described in different ways, according to the nature of the business which preponderated.

It is therefore impossible to pronounce authoritatively that any one particular Branch or Order was excluded from a General Placitum on any given occasion; because, if such Order was not required to act, or if that one House happened to be dissolved before the rest, the presence of the members would not be recorded. Most generally, however, the Placitum comprised the "universitas" as well of the clergy as of the laity, the great as well as the small; and the capitularies, the monuments of the care and wisdom of Charlemagne, are sanctioned by the advice and concurrence of the bishops, abbots, counts, dukes, judges and all others then and there convened; or sometimes, as the proceeding is more succinctly expressed, by "all the people." But these

words are expounded by documents affording further details of the prevalent practice; and the real advisers of the sovereign were the wise and prudent members, selected by his prerogative, and separated from the tumultuous crowd. Counsel was given only by the "seniors," and usually at a meeting held in contemplation of the General Assembly[a]. The mere commonalty attended to receive the commands of their superiors, and they became instructed in the law which they were to execute or obey. Sometimes they were allowed to share in the discussions of the Diet, and to declare that the enactment was agreeable to them. Accepted by the inferior orders, the measure might be more grateful to the multitude, but we cannot find that such acquiescence was requisite for the legal validity of the capitulary.

Counsel, how given by the Proceres.

The people sometimes allowed to share in the discussion.

The direct influence exercised in the Diet by the people, or rather the superior class of the Commons, speaking by their Echevins or other representatives, was when, like the Roman Provincials, they addressed their solicitations to the emperor. In such a case, his answer to the request constituted the law. The same course might be pursued by the ecclesiastical branch, which could, in like manner, supplicate the sovereign and his council of "Proceres," for the confirmation of the canons which they had passed in their own House; and the enactment grounded upon petition was *one* of the constitutional modes of legislation adopted in the Carlovingian empire[b]. According to *another* mode, more frequently practised, but not more constitutional, the sovereign sent down his rescript for the consideration of the assembly. Furthermore, it was in this general Placitum, Diet, or Conventus of the Empire, that all the principal affairs of state were discussed; and the court in which the sovereign was present and exercised his prerogative, extended its political jurisdiction over every part of his dominions. Yet this assembly, which holds so prominent a station in the pages of the ancient chronicler, and still more in those of modern inquirers, cannot be considered with propriety as the Legislature of the empire, or even of the Gauls; nor did the Diet possess a coercive authority over the different states and nations who acknowledged Charlemagne's paramount authority. The Frankish monarchy was an aggregate of members; all the more important communities retained their peculiar and national governments, though administered beneath the supremacy of the emperor, and in his name.

Legislation upon petition, a course imitated from the administration of the Lower Empire. (See above, p. 278, &c.)

Petitions presented in like manner by the Clergy, the answer of the Sovereign, in this case, becoming the "Capitulum," or ordinance. (See II., p. 789.)

General "Placita" of the Carlovingian Sovereigns not to be considered as the legislature of the empire: since the capitularies did not acquire the force of *law* until verified by the several nations in their own peculiar legislative assemblies.

[a] See above, p. 456, note a.

[b] See Part II., *Proofs and Illustrations*, pp. 784–800.

Part I. Ch. XVII.

Historians have pleased themselves by contemplating Charlemagne upon his throne. They have reasoned upon the supposition, that, as the executive power of the state was concentrated in the monarch, the legislature had acquired a corresponding unity. But the vigour of Charlemagne's government rather consisted in the diffusion of his authority. The "Missi," the lieutenants of the emperor, proceeded from the palace armed and invested with his delegated jurisdiction. They represented the person of Charlemagne, and acted in his name; but the several dependent states and vassal races always retained their separate existence, if not their independence; and some of the most important powers of the commonwealth continued vested in the subordinate or co-ordinate legislatures.

Erroneous opinions concerning the Carlovingian Empire.

The theory of the Constitution assumed, that in every leading[a] state of the empire there existed a Mallum, Conventus, Colloquium, or Parliament[b]. The Mallum was the original name given to the Folkmoots of the Teutonic nations, and it is recognized as such in the Salic law. So long as the tribes were uncombined into kingdoms, the seniors and people assembled without edict or summons, and the crescent of the rising moon warned the warriors to the national assembly. But the royal prerogative came in restraint of this liberty; and the Mallum of the Carlovingian age appears as it was modified and controlled by the sovereign. The Freeman was enjoined to lay down his shield and his spear, and to resign the arms of his ancestors[c]. No meeting could be held in the open air. No "Conventus" was lawful without the mandate of the Missus; nor was the Missus to call the Convention unless by the sovereign's special command[d].

The Mallum, or Legislature of the dependent nations.

The Mallum under the Carlovingians not to be held unless by the mandate of the Missus. Members summoned, and compelled to attend the summons; arms not to be borne in the assembly, nor was it to be held in the open air. (See above, p. 111.)

[a] We may suppose that many of the thinly peopled, unimportant *Folks* were merged, wholly or partially, in the larger communities or districts, formed by use and custom, like *Picardy* in modern France. But, on the whole, it is probable that very few of the Grand Fiefs of the eleventh and twelfth centuries were destitute of that species of government which I have described. Generally speaking, those Fiefs had all been States, Tribes, or Nations.

[b] *Mallum*, *Mallus*, *Mal* or *Mathl*, from *Mathlian* (Gothic), to speak, discourse, converse, or parley.

[c] Ut nullus ad *Mallum*, vel ad *Placitum* infra patriam, arma—id est scutum et lanceam—portet, Cap. III. A.D. 806, § 1; Baluze, vol. i. p. 449. [That no one bear arms—that is, shield and lance—to the *Mallum* or to the *Assembly* within the country.]

[d] Interdiximus ut omnes Saxones generaliter conventus publicos

As in the other courts, the clergy sat concurrently with the assembly of the people. The ancient hereditary chieftains retained their station; but their character of vassi, or liegemen, connected them more immediately with the sovereign. The Missus received instructions, which enabled him to select those great vassals whose wisdom or obedience would best insure a good result to the deliberations of the assembly. The Precept, bearing the closest analogy to our ancient parliamentary writs, was issued to the vassus by the sovereign or his deputy; and every individual warned in the king's name, was bound to attend[a]. If a mixed population existed in the country, we find that the Notables of every race—Gothic, or Salic, or Roman—are enumerated amongst the members[b].

Echevins attending the Mallum. (See II., pp. 800, 820 and see p. 271.)

The Echevins appeared for each community; and I cannot find any valid reason for doubting but that the magistrates, or at least a portion of the magistracy of the greater cities, did appear as members of the convention. In the Mallum, all the concerns of the country were administered. Charlemagne, at Aix-la-Chapelle, might issue a general mandate: but the Conventus retained the power which it could best exercise; and the conservancy of the peace and the management of all local affairs, were entrusted to the natural chieftains of the land.

Affairs of the Country or Nation administered in the Mallum.

nec faciant, nisi fortè Missus noster de verbo nostro eos congregare fecerit, Capitulare de partibus Saxoniæ, A.D. 789. [We have forbidden all Saxons generally from holding public assemblies, unless perchance our lieutenant, by our special command, has called them together, Capitular for the region of Saxony.] What had been, or what was becoming the general law, was extended to the Saxons upon their conquest.

[a] Ut ad mallum venire nemo tardet, primùm circa æstatem, secundò circa autumnum. Ad alia vero placita, si necessitas fuerit, vel denuntiatio Regis urgeat, vocatus venire nemo tardet. [That no one delay to come to the Mallum, the first in summer and the second in autumn. But let no man summoned to other assemblies, if there be necessity or a special summons from the King, delay to attend.]—From the Capitular enacted by Charlemagne soon after his accession. It is probable that the Mallum held "de more," went nearly out of use, and that the special Mallum summoned by the sovereign supplied its place. For the summons of the Vassi *by Writ*, see Part II., *Proofs and Illustrations*, p. 814.

[b] As in the Mallum of Carcassonne, Part II., *Proofs and Illustrations*, p. 820.

Part I. Ch. XVII.

The injunction, that the members should exert themselves for the welfare of the community[a], contains within it the concession, that the same body possessed the power of enacting laws for the redress of abuses—otherwise the direction would have been nugatory—and in such a case the ordinance or by-law might be made at once in the Conventus, though afterwards requiring the confirmation of the sovereign. A considerable extent of discretionary authority, to be exercised upon any sudden emergency, would necessarily be vested in the Missi, the counts, and the vassi whom the emperor could trust: and the nobles who attended a Placitum were entitled to direct that a summons should be issued to a fellow vassal of their own rank and order, whose presence might be required[b] for the despatch of public affairs.

Distinction between the "Capitulum" and the "Lex." The Capitulum or *Ordinance* enacted by the Emperor in the general Placitum, Parliament, or Diet of the Empire, *not* considered as *law* until ratified by

A *Capitulary* framed by the emperor[1], by the advice of his council, and adopted in the Diet or Placitum of the empire, did not become a *Law*, until it had been accepted by the several subject nations. What difference subsisted in practice, between the force and efficacy of the *Ordinance* and of the *Law*, we cannot

[a] In the Capitulary of Louis le Débonnaire, A.D. 823, § 28 (p. 802), particular and full directions are given for the convention of the *remedial* Mallum or Placitum, which, according to that law, was to be held in the middle of the month of May. Mably supposes that these Provincial States were invented by Charlemagne. Ce capitulaire est de Louis le Débonnaire; mais on peut, et *on doit même*, sans crainte de se tromper, attribuer à Charlemagne l'établissement des états provinciaux dont je parle. Je prie de faire attention qu'on ne peut rien inférer contre mon sentiment du silence des capitulaires de Charlemagne au sujet de ces états, puisqu'il s'en est perdu un assez grand nombre, et qu'il s'en faut beaucoup que nous ayons un corps complet de sa législation ou de son administration. En second lieu, il seroit difficile de croire que les états provinciaux fussent l'ouvrage de Louis le Débonnaire. Cet établissement, on le verra dans le quatrième chapitre de ce livre, n'a aucune analogie avec le reste de la conduite de ce prince, ou du moins avec la politique des personnes qui le gouvernoient, Mably, vol. i. p. 431.[2]

His reasoning against the presumption of the non-existence of an institution merely in consequence of the silence of written laws, is good and of universal application; but the hypothesis that Charlemagne invented these assemblies is a singular proof of Mably's want of reflection, a quality imperfectly supplied by his brilliant theories.

[b] See Part II., *Proofs and Illustrations*, p. 815.

now determine[a]. It is sufficient for our purpose to know, that the distinction is clearly enounced: though the exact boundary between the jurisdiction of the Imperial Diet and the rights of the community might be often ambiguous and confused. The more usual mode of obtaining the national sanction was by transmitting the capitulary to the Mallum in which it was to be ratified. Here the ordinance was read to the people; and the assent of those who constituted the court, and more particularly of the elected Echevins, gave to the ordinance the force and validity of a law. "Law results from the consent of the people "and the decree of the King," was the emphatic declaration of the Frankish Emperor; and unless that consent was given, no *Law* was obtained.

the acceptance of each nation in which it was to have such validity. (See II., pp. 800–803, and compare with the acceptance of the laws of Athelstane in the kingdom of Kent, id., p. 170.)

(See II., p. 800.)

With a close adherence to the *principle*, that the acceptance of the law was to be signified by each nation, there were considerable variations in the *form* of proceeding. Sometimes a Frankish Mallum seems to have been held in and concurrently with the Imperial Diet, and then no further sanction would be required. Sometimes, the Seniors from each Gau or Pagus appeared far beyond their confines; and sanctioned the enactment, when thus convened before their sovereign. Or the national delegates might proceed to the palace with the resolutions of the *Leod*; and, like the Roman Provincials, petition for the

Various modes by which the subject-nations concurred in legislation. Representatives from each Gau appearing before the Sovereign, as in the case of the Saxons (see II., p. 804). Petitions presented to the Sovereign in the name of the nation, containing the resolutions adopted in the popular assemblies, as in the case of the Frisians (see II., p. 805). These proceedings facilitated by the reminiscences or vestiges of their ancient duodenary courts and federative systems.

[a] The distinction between the two classes of legislation will appear from the capitula added to the Salic law, 819. After they had been accepted in the general convention of the Franks, the emperor (Louis le Débonnaire) declared that they should no longer be called capitula; ulterius capitula appellanda esse prohibuit, sed ut lex tantùm dicerentur voluit, Baluze, vol. ii. p. 598. [He forbad that they should be called ordinances in future, but willed that they should be called the law only.] One of the abuses against which Hincmar remonstrates, is the conduct of the Counts, who sometimes decided according to the *capitula*, sometimes according to the *law*; quandò enim sperant aliquid lucrari, ad legem se convertunt; quandò verò per legem non æstimant acquirere, ad capitula confugiunt; sicque interdum fit, ut nec capitula pleniter conserventur, sed pro nihilo habeantur, nec lex, Mably, vol. i. p. 427. [For when they hope to gain any profit, they betake themselves to the law; but, when they do not think that they can gain through the law, they flee to the ordinances; and so it happens that at times neither the ordinances are thoroughly kept, being accounted as of no force, nor the law.]

Part I. Ch. XVII.

conservation of their franchises, and the amendment of the laws. All these transactions would be facilitated by the ancient usages of the Teutons. A representative system was familiar to them. Their duodenary courts, and the federations formed from these primitive tribunals, all proceeded upon an acknowledged principle of representation: not of the people as individuals, but of the ranks, orders, and members of the community.

(See Chap. III.)

Occasional conventions of the different nations included in the empire, but which conventions had rather the character of political congresses than of legislative assemblies.

At the inauguration of an emperor, he was recognized by the several nations subject to his crown[a]; each realm concurred in hailing the accession of the sovereign raised to the imperial dignity: and, on some other occasions, there was a kind of convention or diet of the different nations[b]. But these are rather to be considered as congresses, having a political object, than real legislative assemblies. There was no union of the parts composing the empire. The nations might be brought together, and placed side by side, the means of incorporation might exist, yet the fusion into one mass did not take place. Neither in fact nor in sentiment, did the members of the community lose their separate political existence; and if we may judge from the example of the Bavarians, the vassal princes freely exercised the right of convening their own legislative assemblies[c]. But if the Diet of the Carlovingian empire only possessed this imperfect dominion over the several states, it was equally incompetent to oppose any constitutional barrier to the power of the sovereign. He was the successor of the Cæsars, nor did any of these institutions deprive him of his Imperial authority. The emperor was still the supreme legislator. From him did all law proceed. The advice given by the Proceres of the palace, the assent of his subjects, appear, according to the theory of the government, only as the means of exercising his prerogative. He transmitted the Capitulum to his lieges for their examination; but his discretion might have withheld the law. A petition might be presented to him, but the prayer might be denied. In every case when the Capitula or the written laws were silent, the deficiencies or imperfections were supplied by his uncontrolled and irresponsible decision. And all those supreme powers of judicature, which the practice of the English constitution transferred to the "King in Parliament," the "King in Council," the

[a] See above, pp. 452 ff.

[b] See Part II., *Proofs and Illustrations*, p. 816, no. 4; p. 818, no. 5.

[c] See Part II., *Proofs and Illustrations*, p. 806.

"King in Chancery," or the king represented by his justices or his great seal, continued wholly vested in the person of the Frankish sovereign[a].

Solution of the difficulties attending the constitutional history of France. Supposed dismemberment of the kingdom at the period considered as the era of the establishment of the feudal system.

It is in these circumstances that we shall easily find a solution of the most perplexing passages in the constitutional history of the French monarchy. It has been observed by a contemporary, whose productions form an epoch in historical literature, that "there is no part of the French feudal policy so remarkable as "the entire absence of all supreme legislation. We find it "difficult to conceive the existence of a political society, nomi- "nally one kingdom, and under one head, in which, for more "than three hundred years, there was wanting the most essential "attribute of government."[b] But when, in a previous page, the distinguished writer whom I have just quoted, and whose candour is always equal to his acuteness and love of truth, had descanted upon "the appearances which might lead us in strictness to "account France rather as a collection of states partially allied "to each other, than a single monarchy," he described the real position of these states, which had been wholly concealed from his predecessors.

Erroneous opinions of the French constitutional writers, Guizot, Mably, Sismondi, &c. who all assume

No theories can possibly be more erroneous, and more calculated to render errors inveterate, than those which the French writers have maintained[c]. Smaller societies are considered by them as

[a] Ut si Missi nostri talem causam in illâ terrâ invenerint quam ad debitum finem, nec per ista capitula, nec per capitula progenitorum nostrorum, neque per legalia capitula perducere possint, nobis rationabiliter et veraciter remandare procurent, ut *nos illis remandemus qualiter indè agere debeant*, Cap. Car. Calvi, apud Tusiacum, 865, § 15, Baluze, vol. ii. p. 199; and see Hincmar, de Ordine Palatii, Bouquet, vol. ix. p. 266. [That if our deputies find such a suit in that land, which they cannot conduct to its proper conclusion either by these ordinances, or by the ordinances of our progenitors, or by the ordinances added to the laws, they shall procure that that suit be remanded reasonably and truthfully to us, so that *we may give them fresh commands how they ought to act in the matter*, Capitulum of Charles the Bald given at Tulley, A.D. 865.]

[b] Hallam, Middle Ages, chap. ii. part 2.

[c] In documents written in French, the Kings of France began to assume the style of "*Roi de France*," long before they discontinued their Latin style of *Rex Francorum*. Henry IV. was the first who constantly used the style of *Rex Franciæ*. The term *Regnum Francorum*,

Part I. Ch. XVII.

formed out of great societies. Every count, and marquis, and duke is represented as an amovable governor, who has succeeded in rendering himself independent of his master. Every distinct

that the so called provincial or local jurisdictions, and

occurring occasionally in the Capitularies, refers to the dominion possessed by the Frankish King, not to territories peopled by the Frankish nation.

Il y a dans l'échelle de la civilisation des dégrès, des époques où la société est incapable de s'élever à l'unité nationale, où elle ne possède ni les lumières, ni les intérêts, ni les principes d'action qui font, d'une multitude éparse sur un vaste territoire, un seul peuple uni sous les mêmes lois, vivant de la même vie, et animé de la même impulsion....

Quelles idées, quelles relations, quels intérêts en seraient le lien et l'aliment? La seule société qui soit possible alors est une société étroite, locale, comme l'esprit et la vie de ses membres. Et si, par quelque puissant accident, par quelque cause passagère, une société plus vaste est un moment formée, on la voit bientôt *se dissoudre*; et à sa place *naissent une multitude de petites sociétés*, faites à la mesure du dégré de développement des hommes, et qui bientôt produisent, chacune dans ses limites, un gouvernement de même dimension. Tel est le phénomène qui *commença à se développer en France après la mort de Charlemagne*, et dont le *dernier terme* fut l'établissement du régime féodal, Guizot, p. 82.[1]

Charlemagne avait tenté de se faire le souverain d'un *grand peuple* et d'un grand empire; l'état du pays se refusait à cette entreprise, et nul de ses successeurs ne fut capable d'y songer. Sous leur règne, le gouvernement et le peuple allèrent *se démembrant, se dissolvant de plus en plus*. Bientôt il n'y eut plus ni roi, *ni nation*. Chaque propriétaire libre et fort *se fit souverain* dans ses domaines; chaque comte, chaque marquis, chaque duc, dans le district où il avait *représenté* le souverain. Si cela fut heureux ou malheureux, légitime ou illégitime, il est puéril de le rechercher; c'était la conséquence nécessaire de l'état des hommes et des choses; c'était partout le travail de la société *aspirant à se former, et incapable de s'étendre au-delà d'étroites limites*. Le pouvoir et la *nation démembrèrent* parce que l'unité du pouvoir et de la *nation* était impossible; tout devint local parce que rien ne pouvait être général, parce que toute généralité était bannie des intérêts, des existences, des esprits. Les lois, les jugemens, les moyens d'ordre, les guerres, les tyrannies, les libertés, *tout se resserra dans de petits territoires*, parce que rien ne pouvait se régler ni se maintenir dans un cercle plus étendu. Quand cette grande fermentation des diverses conditions sociales et des divers pouvoirs qui couvraient la France se fut accomplie, quand les *petites sociétés qui en devaient naître* eurent

territory is a *department*, cut out from a kingdom. Local governments are dismemberments of the general power of the nation. The smaller jurisdictions have acquired their political existence, because the energies of the people shrank within these narrow confines. All these assumptions will be refuted by simply adverting to the fact, that the *Empire* of Charlemagne was not a *Nation*. "*Rex Francorum*" was not "*Rex Franciæ*."[a] [The King of the Franks was not King of France.] The last stage of *dissolution* was nothing else but the natural result of the ancient political existence of each community, exercised more freely and independently than in the Carlovingian age. When the circuits of the Missi were discontinued, the vassal states were remitted to their ancient rights: and if St. Louis declared[b], that the king cannot legislate in the territory of a baron without his assent, there was no real alteration in the fundamental principles of the kingdom. "It is absolutely certain," Hallam continues, "that "the States General of France had, in no period, and in no "instance, a concurrent legislative authority with the crown, or "even a controlling voice. Mably, Boulainvilliers[1] and Mont-"losier[2] are as conclusive on the subject as the most courtly "writers of that country."[c] And with Hallam, we must fully admit, that "the States General had no right of redressing "abuses, except by petition, no share in the exercise of sovereignty "which is inseparable from the legislative power."[d] But does it follow as a just consequence that France, or rather the countries called France, "never possessed a constitution: nor had the "monarch any limitations in enacting laws, save those which, until "the reign of Philip the Fair, the feudal principles had imposed"?

smaller societies, resulted from the division and breaking up of larger societies,

whilst in fact such provincial institutions, &c. are only the vestiges of ancient independent organizations, reappearing when the *superinduced* authority, by which they had been *kept down*, became less efficient.

States General of France never possessing legislative authority.

pris une forme un peu régulière et déterminée, tant bien que mal, les relations hiérarchiques qui les unissaient, ce résultat de la conquête et de la civilisation renaissante, prit le nom de régime féodal, Guizot, pp. 83, 84.[3]

[a] See above, note c on p. 467.

[b] Ne li Roi ne puet mettre ban en la terre au Baron sans son assentement, ne li Bers ne puet mettre ban en la terre au vavassor.[4] That the King was not empowered to legislate in the territory of a Vassal is indubitable; but I am not quite certain that this particular passage establishes the doctrine. It has, however, been so employed by Hallam and Mably.

[c] Hallam, vol. i. p. 183.

[d] Hallam, vol. i. p. 187, and see further remarks on this subject, Part II., *Proofs and Illustrations*, p. 808.

Part I. Ch. XVII.

There were no Diets, no regularly appointed assemblies for the French nation[a], because, in a political sense, there was *no* French nation. The nations speaking the *Langue d'oil*, might perhaps occasionally be termed *Franceiz*: but they had neither community of interest nor community of feeling. Gascons, Angevins, Bretons, Normans, Tolosans, acknowledged the supremacy of the king of the French; the Rex Francorum was their paramount sovereign, and public acts were dated in the year of his reign: but they lived on their own lands, and bore their own names; they would have spurned the idea of being governed as Frenchmen.

Erroneous reasoning of those who suppose that the territories composing France never possessed any constitution except such as was founded upon feudality.

Discarding the consequences deduced from an erroneous theory, let us recollect that feudality, great as its influence may have been, was only superinduced upon the social system. In this "collection of states partially allied to each other,"[b] the members had their proper legislative assemblies, in which the power had remained vested since the extinction of the Carlovingian empire. Such an authority as Tassilo possessed in the assembly of his Proceres, was exercised by a duke of Britanny or a countess of Champagne[c]. During the period when no national assembly can be discovered in "France," and when a political congress alone declared the will of the different nations inhabiting the land of Gaul, and constituting the dependencies of the Capetian crown, we may discern, in every portion of the kingdom, the legislatures which replaced the Mallum of the Carlovingian age, modified by the alterations in the jurisprudence and policy of the state, yet all exhibiting a degree of uniformity, which could only arise from a common origin.

(See Tassilo's Decree, see above, p. 466 and II., p. 806.)

[a] Pendant que la France fut confédérée sous le régime féodal le pouvoir législatif y fut suspendu. Hugues Capet et ses successeurs, jusqu'à l'avènement de Saint Louis, n'avoient point le droit de faire des lois, la nation n'avoit point de diète, point d'assemblées régulièrement constituées dont elle reconnût l'autorité. Le systême féodal, tacitement adopté et développé par la coutume, étoit seul reconnu par les nombreux souverains, qui se partageoient les provinces. Il leur tenoit lieu de lien social, de monarque et de législateur, Sismondi, vol. iv. p. 2.[1]

[b] Hallam as above. And see a remarkable passage from Ivo Carnotensis (Part II., *Proofs and Illustrations*, p. 844).

[c] See the enactment of Tassilo (Part II., *Proofs and Illustrations*, p. 806), and the assizes of Geoffrey Plantagenet (id. p. 824), and Blanche, Countess of Champagne and Brie (id. p. 827).

I must be again allowed to observe, without disparagement to those illustrious names amongst the French, who have treated upon the constitution of their own country, that they have deceived themselves by seeking for institutions which did not exist; and are equally perplexed and puzzled by the facts which they do discover. Maintaining that the Champ de Mai was the supreme legislative assembly of the Empire, and always forgetting that France was neither a nation nor an empire, they will seek for any cause except the right one, to account for the evident want of the characters which they would fain ascribe to the national legislature. How many ingenious excuses are formed to explain its non-efficiency! The indifference of the Franks to their Champ de Mai is lamented; the ignorance which compelled Charlemagne to keep the legislature under his immediate inspection is deplored. He was forced to withhold from his subjects their lawful share of power. One writer tells us that the various modes of legislation imply the greatest contradiction and confusion. Another considers that the Carlovingian empire did not possess any "social forces," any "independent or self-existing institution"; and describes the whole form of government as a mere ephemeral and transitory scheme[a].

Opinions of Mably and Guizot. (See Note below.)

[a] Etait-ce là un gouvernement libre? Non certes, car on n'y voit aucune institution indépendante et subsistant par elle-même, aucune force sociale érigée en pouvoir public et admise à limiter définitivement la volonté du souverain. Cependant ce n'était pas non plus un gouvernement despotique; car, pour les faibles, le maintien de l'ordre leur valait bien plus de liberté qu'ils n'en avaient auparavant; et quant aux forts, Charlemagne, en s'astreignant, pour les gouverner et se servir d'eux, à recevoir périodiquement leurs conseils, s'imposait à lui-même la nécessité d'accepter souvent leur influence. Hincmar vante l'exactitude avec laquelle ce qui avait été convenu dans l'assemblée générale était maintenu et exécuté.

Qu'était ce donc, à tout prendre, que ce gouvernement? Un grand et noble fait, œuvre transitoire de la supériorité d'un homme, triomphe éphémère du système monarchique, uniquement dû au génie et à l'ascendant du monarque, qui ne fonda point et ne pouvait fonder par des institutions ni les libertés publiques ni la royauté, mais qui, appellant la nation à son aide pour être vraiment Roi, sut imprimer un moment au peuple et au pouvoir, l'unité de sa pensée et de sa volonté, Guizot, pp. 340, 341.[1]

Le Champ de Mai possédoit, il est vrai, la puissance législative; mais, si on y fait bien attention, ce n'étoit en quelque sorte que *d'une*

Part I. Ch. XVII.

States composing the country called France, incorrectly denominated Provinces (see also II., p. 824). Legislatures formed out of the Mallum or Placitum of the Carlovingian age.

Take a comprehensive historical view of the territory now called France, and all these contradictions and difficulties will disappear. The various bodies incorrectly denominated Provincial States—incorrectly, because, in the ordinary acceptation of the term, a province is a part of an incorporated territory or empire, whilst the so-called provinces of France were co-dependents of one crown—are legislatures formed from the Mallum of the earlier age. The name may be forgotten; the Missi no longer represent the person of the emperor; and the territorial ruler, the count or the duke, may have been enabled to assert a greater degree of independence than his predecessors, who were subject to the commanding genius of a Charlemagne. But we find all the tokens which are sufficient to establish the main

manière précaire; parceque l'extrême ignorance et les vices des Français *n'avoient pas permis à Charlemagne de se dessaisir* de quelques parties de la puissance exécutrice. Celles qu'il n'auroit pas retenues entre ses mains auroient été mal administrées, et seroient devenues un obstacle à ses desseins, Mably, vol. i. p. 252.[1]

Une nouvelle cause de la décadence prochaine du gouvernement, c'est que l'assemblée du Champ de Mai n'étoit astreinte à *aucune forme fixe et constante dans la manière de délibérer et procéder* à l'établissement des lois. Autant qu'on peut le conjecturer à l'aide de nos anciens monumens, souvent elle prévenoit le prince, et le prioit de mettre le sceau royal aux règlemens qu'elle avoit dressés. Quelquefois le prince proposoit lui-même une loi, et requéroit la nation d'y donner son consentement. Tantôt les trois ordres de l'état dressoient leurs articles à part, et tantôt ils se réunissoient pour ne faire qu'une seule ordonnance. Il ne paroît pas qu'il y eût des termes prescrits pour délibérer à plusieurs reprises sur un même objet. Quelques lois ne furent portées qu'après plusieurs longs débats, et d'autres furent proposées, reçues et publiées sur le champ, par une espèce d'acclamation.

Charlemagne avoit laissé subsister cette manière *indéterminée* d'agir dans le Champ de Mai, parceque *l'extrême ignorance* des Français *ne lui permettoit pas* de les tenir assemblés, sans qu'il veillât par lui-même à leur conduite, et la dirigeât; et des formalités, en le gênant, auroient été un obstacle éternel au bien. D'ailleurs, la nécessité où il étoit de se transporter d'une frontière de son vaste empire à l'autre, ne lui laissant la liberté de convoquer la nation que pendant un temps très-court, il falloit se hâter de décider les affaires; et le génie de Charlemagne tranchoit en un moment les difficultés, que des formes auroient rendues plus épineuses, et que ses sujets n'auroient jamais pu résoudre, Mably, vol. i. p. 256.[2]

position for which I contend, namely, that the legislative bodies existing in the Capetian dependencies were shaped out of earlier institutions and that they were not the result, either of *concession* from the monarch or of *usurpation* by the people. Consider those instances in which any evidence has been preserved or rendered accessible. The prelates retain the same station; the vassi have taken the name of the baronage: in the consuls of the towns, we easily discover the Judices of the Mallum; and probably these are only the "Curiales" of the Roman age under another appellation. They attend on behalf of the communities to which they belong; and their cities are not to be deemed mere associations of enfranchised villeins. They are not mean burghers, who have extorted their rights from the weakness of their lords, but members of a free and powerful class; and to whom the most distinguished honours of nobility could not be denied. In all the privileges of the "Estates," the derivation from the more ancient system is apparent[a]. Precepts or writs are issued by the king's seneschal, who acts as if he were the Missus. The subjects petition, as of old, and all the main features of the Carlovingian empire are reproduced in the age of feudality.

The preceding position exemplified by the Estates of the Sénéchaussée of Carcassonne (see II., pp. 834–844). 1269, 1271. These assemblies summoned by writ, and containing a full representation of the Tiers Etat, who are usually considered as having been introduced into the States General of France by Philip le Bel, 1302 (see II., p. 812). Consuls attending in behalf of the cities, the Roman Curiales under another name (see above, p. 270).

Let us pursue the inquiry, and we shall find that from the union of the local assemblies, at a comparatively recent period, the states general of the *Langue d'oc* were formed[b]. The legislature of the ancient kingdom of Septimania had, however, long obtained the character of "Estates General." The Conventus[c] may be discovered from age to age; sometimes in the allusions of the chroniclers, sometimes in the acts of those assemblies called councils, but which, in fact, were the unions or concurrent sessions of the ecclesiastical and civil authorities. The "Parliament" held at Pamiers by Simon de Montfort is the first of these assemblies of which we possess any very distinct account; and it is singularly interesting to an English reader, to

States of the *Langue d'oc* formed by the union of the States of the Sénéchaussées, &c. Estates of the County of Toulouse (see II., pp. 807, 829, &c.).

1212. Parliament of Pamiers (see II., p. 829) convened by Simon de Montfort.

[a] For their privileges, see Vaissète, vol. iii. p. 529. They had been accustomed, from time whereof the memory of man ran not to the contrary, to receive knighthood and to display all the insignia of chivalry. (Preuves, p. 607.)

[b] Nos états, say the historians of Languedoc (vol. iii. p 480), ne sont devenus généraux que par le concours des états particuliers de chaque sénéchaussée, qui s'assemblèrent d'abord séparément, et qui, s'étant réunis dans la suite, n'ont composé qu'un seul corps.[1]

[c] Vaissète, vol. ii. pp. 181, 182, 187, 195, 246, 294.

Part I. Ch. XVII.

observe the "Tiers Etat" in an assembly convened by him, who is supposed to have first summoned the citizens and burgesses to appear in the parliament of England. When the tribunal of the Inquisition is established, the council is composed of the counts and barons of the county, and the magistracy appearing for the principal city. It is true that this assembly is held before the papal legate. Count Raymond[1] appears, not as the sovereign, but as one of the members; and the assembly, therefore, bears an extraordinary aspect. Raymond, however, could not take a higher station. The heretic was scarcely restored to the possession of those parts of his dominions which had not been seized by the pontiff and the French king; and yet, at the time when the power of the prince was thus broken down, the victors respected the privileges of the community, and acted in conformity to the national constitution.

1229. Council or Parliament of Toulouse, composed of Prelates, Counts, Barons and Magistracy. (See II., p. 831.)

It is not indeed to be supposed, that, in an empire embracing so many states, formed at different periods, and peopled by various races, there should have been an entire uniformity, either in the original elements of the local legislatures, or in the stages of their development or decay. The institutions of ancient Gaul were, as we know, characterized by great diversity. These, in some instances, were supplanted by Roman municipalities; in others, modified by the Roman government. The Saxons of Bayeux had traversed the territory of the Belgic tribes before the Frankish invasions; and the Franks, though powerful as conquerors, were few in number. Many fragments of early policy may have been retained. In the eleventh century, we find the people of Neustria establishing a representative legislature, for the purpose of resisting their Norman invaders[a]. The

Attempt of the Neustrian peasantry to

[a] See above, pp. 102, 103. The passage of William of Jumièges, lib. v. c. 2, is very curious. The events happened in the beginning of the reign of Richard II., about 997.

Dum igitur tantæ probitatis exuberaret copiis, in initio suæ juventutis intra Normannicum Ducatum contigit quoddam pestiferi oriri seminarium dissidii. Nam *rustici unanimes* per diversos totius Normannicæ patriæ Comitatus, plurima agentes conventicula, juxta suos libitus vivere decernebant, quatenus tam in sylvarum compendiis, quàm in aquarum commerciis, nullo obsistente antè statuti juris obice, legibus uterentur suis. Quæ ut rata manerent, *ab unoquoque cœtu furentis vulgi duo eliguntur legati, qui decreta ad mediterraneum roboranda ferrent conventum.* Quod ut Dux agnovit, protinus *Radulphum*

Norman historian stigmatizes this rising against the Norman lords as a rebellion: but the systematic arrangement appears beyond the ability of an ignorant peasantry; and it is not a violent or extravagant supposition that the "Central Conventus" was a part of their ancient Romano-Celtic government, which had lingered through successive conquests, until revived as an unavailing defence against the Northern tyranny.

organize a federative or representative government.

During the revolutions of the middle ages, nation was implanted within nation, community ingrafted upon community. Hence, one and the same tract of land might frequently possess two, or even more, concurrent *sets* of municipal or legislative institutions, arising from distinct sources, and yet in full vigour[a].

States of the Middle Ages formed by nations implanted amongst nations: two or more *sets* of municipal institutions might exist in the same territory.

Comitem cum militûm multitudine illis destinavit, qui agrestem comprimeret ferocitatem, et rusticam dirimeret concionem. Qui non morans jussa, cunctos confestim legatos cum nonnullis aliis cepit, truncatisque manibus ac pedibus, inutiles suis remisit, qui eos à talibus compescerent, et ne deteriora paterentur, suis eventibus cautos redderent. His rustici expertis, festinatò concionibus omissis, ad sua aratra sunt reversi, Duchesne, p. 249. [While therefore he exulted in the wealth of his abounding valour, in the beginning of his youth, it happened that there arose, in the Dukedom of Normandy, a certain school of pestiferous unrest. For *with one consent, the rustics*, throughout the separate counties of the whole of Normandy, held many assemblies and determined to live according to their own desires, that they might enjoy their own laws, both in the easements of the woods and the profits of the waters, in spite of the prohibition of the law previously enacted. And that these might be ratified, *two deputies are elected from every assembly of the mad mob, to carry their decrees to the central convention for confirmation*. And when the Duke learnt this, he forthwith sent against them Count *Ralph* with a number of knights so that he might restrain their boorish wildness and disperse the gathering of rustics. Executing his orders without delay, he speedily captured all the deputies with some others, he cut off their hands and feet, and sent them back crippled to their friends to restrain them from similar actions and by their own experience to make them cautious lest they should suffer worse punishments. After these experiences, the rustics immediately discontinued their assemblies and returned to their ploughs.]

[a] And that they might exist under the most adverse circumstances, may be in some measure elucidated by the singular example of the Roman Catholic "Tribes" of Galway[1]. These families have constantly preserved the right of electing the *Warden*, a prelate possessing episcopal authority, down to the present time; and I believe that they

Part I. Ch. XVII.

Imagine a tribe of Franks establishing themselves in a Roman Municipium. They would exercise their national powers of government in the Mallum; the Roman population would retain their Curia, though perhaps deprived of much of its ancient jurisdiction, just as the Decurion would be compelled to yield precedence to the Teutonic "Senior." When the distinction of race was obliterated, and the population blended into one mass, both tribunals, or, at least, bodies formed out of both tribunals, would still continue to share the administration between them. The governing classes of the community would consist of two branches, a bench of Twelve Echevins, and a chamber of an Hundred Counsellors. This course of events, which I have attempted to portray by a single example, must have existed under an infinite variety of modifications. Sometimes one *interest* would keep the ascendancy, sometimes another; and the multifarious influences of political events and local peculiarities would cause the elements to enter into very diversified combinations. Allowing, however, for every deviation and exception, the general theory remains unaltered; and the uniformity in the constitution of the *Etats* and "*Landstände*" throughout the empire, and whether in Gaul or in Germany, cannot be otherwise explained. Sooner or later, the same features are always to be discovered. An assembly convened by the writ or mandate of the sovereign; three orders, namely, clergy, landholders, and the virtual or delegated representatives of the municipal communities, and lastly, the legislative power vested in the sovereign, though exercised by the advice, or upon the petition, of the subjects thus convened.

Reappearance of the Teutonic Courts, as in the case of the confirmation of the ordinance of Chartres by the twelve Burgesses of Paris, &c. (see II., p. 807) representing the ancient Scabini (see II., p. 801).

When the Teutonic population preponderates, the duodenary courts or fragments of them will constantly reappear. Sometimes they will seem to be isolated, or suddenly evolved; but, upon a deeper investigation, we shall be convinced that they are not new creations, and that they existed in connexion with the general system of jurisdiction, although perhaps their action may have been concealed.

(See above, p. 302.)

Lastly, in the tendency, spirit, and form of government, we shall always trace the combined effect of Roman and Barbaric institutions: the former preponderating in the court of the sovereign, and the latter in the several members of which the

yet elect a Roman Catholic sheriff and aldermen, for some purposes connected with ecclesiastical jurisdiction.

state is composed. The history of the countries comprehended under the collective name of France, must be left to others[a]; but the foregoing observations will convince the reader, that it is an error to seek the constitution of the "kingdom" in the states general, or to suppose that the Provincial Etats were merely a *succedaneum* for a universal legislative authority: on the contrary, the states general are to be considered merely as an accident, an imperfect attempt to supersede the Etats of the component parts of the realm: but never advancing beyond an outline, and without any definite organization or efficient power. England was enabled to proceed in a different course; and the Conquest, by breaking down the barriers between the ancient kingdoms, and eradicating all repulsive forces, facilitated the operation of the causes which ultimately consolidated our island into one monarchy[b].

[a] Sismondi partly seizes this great truth in his observation, that l'histoire des grands feudataires, bien plus puissans que le Roi lui-même, serait la vraie histoire de la France si nous avions assez de documens pour l'écrire, vol. iii. p. 231[1]. A full and detailed history may be impracticable; but a synopsis of the chronicles of each community would render the general history of the country called France more intelligible; and the valuable histories of Languedoc (Vaissète), and Britanny (Lobineau and Morice), shew that the outline, at least, of the constitutional history of the provinces may be traced. The custom of enrolment, by which our English Records have been preserved, never existed in France; and the proceedings of the Estates of the Provinces, the objects of jealousy to the government, were *not* the objects of curiosity to the historian: hence the scantiness of materials. Perhaps some gleanings may be found in the archives of the great towns; and the registers and lieger books of the cathedrals and monasteries may contain entries of writs of summons, and documents of the same description.

[b] In the original composition of this work, I had not the advantage of being guided by Mr. Allen's "Enquiry," which has been justly characterized "as the most important book upon constitutional an-"tiquities and law that has appeared for many years." (Edinb. Rev., vol. lii. p. 138.) The slow progress of these sheets through the press has enabled me to profit by Mr. Allen's researches; to refer my readers to the "Enquiry" for full explanations of subjects upon which I have treated in a cursory and imperfect manner; and I hope, to confirm the general theory of the derivation of royal prerogative from the Roman empire. But, agreeing with Mr. Allen in such general theory,

I have not seen reason to alter my opinion, that the assumption of the imperial prerogatives by the Barbaric monarchs was the result of an *actual succession* from the empire, either by direct concession, as in the case of Clovis, or resulting from the feeling—sometimes expressed more clearly, and sometimes more obscurely—that the Roman empire subsisted as a body politic; and that whoever rose to authority within its boundaries, was a Vicar of the empire. Mr. Allen supposes that these prerogatives were cast upon the sovereign by the *fictions* of the civilians and the clergy: whilst it appears to me that they are *realities*. Such was the force of opinion, that a Barbarian, ruling on Roman ground—an Odoacer, a Leuvigild, an Edwin, a Theodoric—had no other means of legitimating his authority. The Diadem or the Tufa (see above, p. 358 and below, p. 490) was his *warrant* for exacting lawful obedience.

CHAPTER XVIII.

Anglo-Saxon Constitution—Royal office and title of King, not known to the Angles, Jutes and Saxons, before their arrival in Britain—Limited Monarchies of the Middle Ages, to be considered as arising out of the Roman Empire—this position proved by contrasting such Monarchies with the Scandinavian Kingdoms—Succession to the Throne amongst the Anglo-Saxons —how far hereditary—Anglo-Saxon Kings, not elective in the ordinary sense of the term—apparent instances of Election only judicial recognitions—Theory of Succession—the Sovereign acquired an inchoate right by birth, but was to be recognized by the Nation—Imperial Sovereignty of the Anglo-Saxon Kings, distinct from the Royal right—its rise and progress—The Bretwaldas—their authority deduced from the Roman Imperial authority—Northumbrian Bretwaldas—Decline of Northumbria, rise of Mercia,—and of Wessex—Egbert—The Danish Invasions —their effect upon the general policy of the Empire—The Anglo-Saxon Empire attains its most flourishing period under Edgar—nature of his dominion over the Britons, Danes, Scots and English or Saxons—Apanages of the Athelings of the Royal Family—Mercia, Northumbria, East Anglia—Division and conversion of Kingdoms into Earldoms.

WHEN the "Three Tribes of Germany" first invaded Britain, royalty, in our sense of the term, was unknown to them. Amongst the Teutons in general, the word "king," probably borrowed from the Celtic tongue, though now naturalized in all the Teutonic languages, was as yet not introduced or invented[a]. Their patriarchal rulers were their "aldermen" or seniors. In "Old Saxony" there was such an alderman in every Pagus[b]. Predominant or pre-eminent chieftains, whom the Romans called "Reges," and who were often confirmed in their dominions by the Romans themselves, existed at an earlier period amongst several

Name of King, probably borrowed from the Celts. (See II., p. 662.)

Saxon Leaders, originally called "Ealdormen," or Seniors. (See II., p. 686.)

[a] The grounds for this assertion appear so convincing, that I have adopted it; though not without much consideration (Part II., *Proofs and Illustrations*, p. 662).

[b] It is thus that the monk of Paderborn, usually quoted as the

Part I. Ch. XVIII.

of the German tribes; but it must not be supposed that these leaders possessed any of the exalted functions and complex

Saxon Poet, describes the nation, in his metrical history of the Life and Conquests of Charlemagne.

> ...nec Rege fuit saltem sociata sub uno,
> Ut se militiæ pariter defenderet usu,
> Sed variis divisa modis plebs omnis habebat
> Quot pagos tot pene duces. (Bouquet, vol. v. p. 138.)

[Nor was the nation even united under one king, so that it might defend itself by joint military service; but the whole people was divided in many ways and had almost as many dukes as it had villages.]

The earlier authority of Bede, when describing the fate of the English missionaries, is equally conclusive;

...qui venientes in provinciam intraverunt hospitium cujusdam villici, petieruntque ab eo, ut transmitterentur ad satrapam qui super eum erat, eo quod haberent aliquid legationis et causæ utilis, quod deberent ad illum perferre. Non enim habent Regem iidem Antiqui *Saxones*, sed satrapas plurimos suæ genti præpositos, qui ingruente belli articulo mittunt æqualiter sortes et, quemcumque sors ostenderit, hunc tempore belli ducem omnes sequuntur, huic obtemperant; peracto autem bello, rursum æqualis potentiæ omnes fiunt satrapæ. Suscepit ergo eos villicus, et promittens se mittere eos ad satrapam qui super se erat, ut petebant, aliquot diebus secum retinuit.

Qui cum cogniti essent a Barbaris quod essent alterius religionis, nam et psalmis semper atque orationibus vacabant, et quotidie sacrificium Deo victimæ salutaris offerebant, habentes secum vascula sacra et tabulam altaris vice dedicatam, suspecti sunt habiti, quia si pervenirent ad satrapam et loquerentur cum illo, averterent illum a diis suis et ad novam Christianæ fidei religionem transferrent; sicque paulatim omnis eorum provincia veterem cogeretur nova mutare culturam. Itaque rapuerunt eos subito, et interemerunt. Hist. Eccles., lib. v. cap. 10.

[Coming to the province, they entered the guest-house of a certain steward, and requested of him that they might be sent to the lord who was over him, because they had a message and something to his advantage to communicate to him. For these same Old *Saxons* have no king, but several lords who rule that nation; and on occasion of impending war, they cast lots without distinction of persons, and whomsoever the lot indicates, him they all follow and obey as leader during the war; but when the war is over, all these lords again become equal in power. The steward received and kept them with him in his house some days, promising to send them to his lord, as they desired.

attributes, which, according to our ideas, constitute royal dignity. A king must be invested with permanent and paramount authority. For the material points at issue are not affected by shewing that one powerful chieftain might receive the complimentary title of *Rex* from a foreign power; or that another chieftain, with powers approaching to royalty, may not have been created occasionally, and during great emergencies. The real question is, whether the king had become the lord of the soil, or at least the greatest landed proprietor; and the first "Estate" of the commonwealth, endued with prerogatives which no other member of the community could claim or exercise. The disposal of the military force; the supreme administration of justice; the right of receiving taxes and tributes; and the character of supreme legislator and perpetual president of the councils of the realm; must all belong to the sovereign[a], if he is to be king in deed, as well as in name.

(See above, p. 299.)

But the prerogatives of the king may exist concurrently with the franchises of the nation; and the main object of our inquiries must be, the development of the limited authority possessed by the Anglo-Saxon kings: and the relation which that authority bears to the constitution formed in England, after the Anglo-Saxon dominion had passed away. I have already attempted to shew, that the principal states of the middle ages

Limited Monarchies of the Middle Ages, to be

Now when the barbarians knew that they were of another religion by their continual prayer and singing of psalms and hymns and by their daily offering of the saving victim—for they had with them sacred vessels and a consecrated table instead of an altar—they grew apprehensive, lest, if they should come into the presence of their chief and converse with him, they might turn him from his own gods, and convert him to the new religion of the Christian faith; and thus by degrees, all their province might be obliged to change its old worship for a new. And therefore they seized them suddenly and put them to death.]

Alfred, in his version (p. 624), renders the term "Satrapæ" by aldermen. It is said that there were twelve of these nobles, who, in the vernacular chronicle of the Old Saxons (Botho, apud Leibnitz, Script. Rerum Brunsvicensium, vol. iii. p. 292), are called Ethelings. These authorities testify as strongly in favour of the authority of the Ealdormen in their *particular* "Pagi," as they disprove the existence of any *general* authority.

[a] See Allen, p. 11.

Part I. Ch. XVIII.

are to be considered as springing forth from the Roman empire. In addition to the affirmative proofs, we may give further support to this hypothesis, by contrasting the policy of the kingdoms so built upon Roman foundations, with those which originated beyond the verge of the empire, and out of its boundary. Let us contemplate the kinsmen of our Anglo-Saxon ancestors, who continued in their pristine settlements. Examine the policy prevailing in the dominions settled by those tribes, who did not migrate into the Roman provinces. View the Gothic nations on the shores of the Baltic, or on the banks of the Elbe. In the Scandinavian states, we shall find the elements of a government, apparently free. The ordinary administration of the law was vested in the virtual representatives of the people; they participated in the task of legislation; they raised the sovereign to the throne. The principles of jurisprudence displayed in the Norwegian Codes were not devoid of equity and justice. The Folkmoot of the "Hærred" assembled within the circle of judgment, and the Doomsmen were called together according to the ancient traditions of the Ases. The *Konung* did not claim to be above the law; and cases can be adduced in which the Norwegian monarchs were bound, or affected to be bound, by the judgment of the tribunal.

considered as arising out of the Roman Empire or Fourth monarchy (see above, pp. 259, 298, 299). Proofs of the position derived by contrasting the policy of those States which arose on Roman ground, with the Scandinavian kingdoms.

Scandinavian States: privileges of the people, the popular courts (see above, pp. 91–94, and 105–108), inadequate to secure the liberties of the people.

Thus far we have the *theory* of a limited monarchy. But what was the practice of Scandinavia? Take the answers given by the saga and the skald. In all matters of state and royalty, the "Konungs" of the Northmen had no acknowledged control. Considered individually, the "Bondes" appear as energetic freemen, fully capable of defending their rights, perhaps of abusing them. The sturdy owner of the Odal land treated with his sovereign sometimes upon equal terms, and often with defiance. Yet there was no real balance of authority, nor any Estate or Order by whom the sovereign's despotism could be resisted. Collectively, the people, in spite of all their privileges, had no weight against the king. The sovereign defied public opinion; he altered the religion of the state; he moulded the government at his will; he displaced the hereditary chieftains as liked him best; taxes and tributes were imposed at his bidding. The Britons, fleeing before the Saxon sword, took refuge in Armorica; and the Anglo-Saxons sought protection amongst the Scots against the exactions of the Norman Conqueror, but it was to escape from a sovereign of their own blood and lineage, that the subjects of Harold, vexed and ground down by his insupportable

Tyranny of the Norwegian monarch; Iceland settled by the Norwegians, who take refuge in that island to escape from the tyranny of Harold.

avarice and tyranny, sailed across the stormy sea to the dreary Thule, and fled to the outermost verge of the habitable world.

The Anglo-Saxon empire arose under circumstances, not entirely dissimilar to the kingdoms of the North. Like them, it was created by the subjection of many weaker states beneath a predominant kingdom. But the Anglo-Saxon "Basileus" was taught his duty, at the same time that he enlarged his prerogative. The theory of government, if it attributed a supreme authority to the chief magistrate, declared at the same time, that he received his power for the benefit of the nation. The subjects were more sheltered from the will or caprice of their rulers. Their rights were protected. The opposite elements so corrected each other, as to produce a happy medium between the refined despotism of the Cæsars and the turbulent license of a Germanic community.

The Anglo-Saxon Commonwealth was very far from possessing that utopian perfection which has been ascribed to it by political enthusiasts; yet we may discern the great outline of a limited monarchy, and all the germs of civilized freedom.

Hereditary succession amongst the Anglo-Saxons; that is to say, the supreme authority was vested in the sons of Woden (see above, p. 8), from whom the Ealdorman, or King, was to be elected or selected.

Although the canon of the royal succession was not entirely determined as between individuals, yet the supreme authority was ascribed indefeasibly to the ruling castes or families. The Bavarian Agilolfings constituted such a caste. Supreme power belonged wholly to the individuals of the heroic race; it was their monopoly. Property or merit might advance any freeman to the highest station beneath the King; yet none but a son of Woden could ascend the throne. The Roman emperor, who swayed that mighty monarchy which was fore-ordained to be diverse from all the other nations of the world, might be the progeny of the meanest peasant or the vilest slave: but the sovereign of the Old Saxons could only be found amongst the seniors of the nation; and his kinsmen alone could share his power. In the very earliest periods of the Anglo-Saxon annals, and immediately after their settlement in Britain, the supreme or royal authority seems generally to have been transmitted by lineal descent, son succeeding to father. In subsequent ages many exceptions are observed: and the brother of the late king, or even a more distant collateral relation, was often preferred to the son, whose right, though preserved, was postponed to that of his uncle. This deviation from lineal succession often arose from the necessity of the case. As long as the government retained its primitive principles, how could a minor rule the

Royal authority, in the earlier ages of the Anglo-Saxon kingdoms, usually transmitted by lineal descent, son succeeding to father; deviations observed in subsequent ages, the brother of the late King being often preferred to the son.

Part I. Ch. XVIII.

state with safety to himself and advantage to the people? The cares of royalty required the active exertions of a matured intellect and a vigorous arm. If the empty name of "king" had been bestowed upon a child, the supreme authority must have been delegated to the kinsman, as regent; and the possession of power might tempt the tutor to conspire against his helpless ward. But by declaring that if the elder representative of the royal house had been once called to execute the royal office, he was to retain the sceptre during his own life, the temptation was removed, and a greater security was given to the person of the heir, and to the tranquillity of the kingdom.

Anglo-Saxon monarchy, not elective in the ordinary sense of the term; the Royal authority being wholly vested in the Royal families.

Using the term election according to the ordinary sense in which the word presents itself to men's minds, as denoting a free and unrestrained choice amongst many individuals, none of whom possess any presumptive right, I cannot assent to the doctrine that the Anglo-Saxon state was, either in spirit or in form, an elective monarchy. The very document[a] which has been confidently adduced as the strongest evidence in favour of the proposition contains an express acknowledgment of hereditary right. Those who advocate the contrary opinion will quote the various instances in which we find the accession of the monarch accompanied by an act of the legislature. But Wessex is the only state from whose succession any principles can fairly be deduced; and in no one of these cases, excepting during the Danish invasions, was the line of Cerdic disinherited. The utmost extent of the *elective* power, consists in the preference given to one branch of the royal family over another. If occasional diversions from lineal succession prove the *freedom* of choice, we might almost assert that Russia is an elective empire. What is then the cause of this opinion? It arises from a misconception of the functions exercised by the Legislature. In the examples brought forward for the purpose of establishing the elective nature of the Anglo-Saxon crown, we shall easily perceive the Great Council of the nation, acting in a *judicial* capacity. The members are not national representatives, offering the empire to a candidate whom their voices have raised to authority, but they are the "Witan," the judges, whose wisdom is to satisfy the people that their allegiance is demanded by the lawful sovereign.

Many contingencies may be pointed out, in which such a judicial recognition was absolutely requisite, according to the

[a] The Coronation Ritual. See Part II., *Proofs and Illustrations*, p. 670.

policy which then prevailed. The adoption of the canon law called for the creation of such a tribunal. It is not certain that, during the earlier periods, illegitimacy was a bar to the succession. But the clergy introduced other doctrines; and the Church declared to the state, that the child of a union, illegal according to the dogmas of the ecclesiastical code, was incapable of succeeding to the throne. Now if the king appeared in the character of *heir*, the clergy and "ealdormen" of the nation were bound to satisfy themselves that he was born in lawful matrimony. They were to be assured that the marriage of his parents was not vitiated by adultery, or contracted within those prohibited degrees which annulled the bond[a]. Further objections might be taken to the title of the lineal heir. An opinion prevailed that the *Atheling*—for thus did the Anglo-Saxons denominate their crown prince—was to be "porphyrogenitus"; and that if born before his father and his mother had been ordained to the royal dignity, the crown did not descend to the child of uncrowned ancestors[b]. This principle may have been ultimately discarded;

Cases in which such judicial recognitions might be required. The Heir was to be born in lawful matrimony, and *after* his parents had been called to the throne. And the judgment of the Witan would be required to shew that he was legitimate.

[a] These are the cases particularly contemplated by the 12th canon of the Council of Cealchythe, A.D. 785. (Concilia, vol. i. p. 148.)

Duodecimo sermone sanximus, ut in ordinatione regum nullus permittat pravorum prævalere assensum; sed legitimi reges a *sacerdotibus* et *senioribus* populi eligantur, et non de adulterio vel incestu procreati: quia sicut nostris temporibus ad sacerdotium secundum canones adulter pervenire non potest; sic nec christus Domini esse valet, et rex totius regni, et hæres patriæ, qui ex legitimo non fuerit connubio generatus. [By the twelfth canon we have decreed, that in the appointment of kings none permit the vote of wicked men to prevail; but that the kings, legitimate and not born of adultery or incest, be chosen by the *priests* and *elders* of the people; because as in our times the canons forbid anyone born of adultery to enter the priesthood, so he cannot be the Lord's anointed or the king of the whole realm or the heir of the country, who is not born in lawful wedlock.]

This is one of the authorities to which Mr. Turner appeals, as a proof that the Witenagemot elected the king.

[b] This was one of the objections to the succession of Edward the Martyr.

...qui *Eadwardus* cum in Regem consecrari deberet, nonnulli de principibus terræ contraire ne Rex fieret nisi sunt; tum quia morum illius severitatem, qua in suorum excessus acriter sævire consueverat, suspectam habebant, tum quia matrem ejus, licet legaliter nuptam, in

Part I. Ch. XVIII.

but it subsisted to such an extent as to call for discussion and for judgment. A third case might require judicial investigation. The Atheling, one of many sons, might claim under his father's appointment or nomination. As amongst his children, the king was entitled to select his successor: this power was fully recognized, and viewed as a royal prerogative. But such a legal act might be merely oral; and the declaration, the "*Cwide*," would require the confirmation of those who heard the last words of the dying sovereign. If made by writing, proof that the *cross* or sign had been traced by the testator, could only be given by the high dignitaries who actually attested the act; and how was their testimony to be received except before the Legislature? The Royal Will was to be *proved in the Witenagemot*, and recorded by the Peers of the Empire. Force or faction might induce a party of "Optimates," as on the accession of Athelstane, to oppose the nomination made by the deceased monarch[a]; but this opposition did not succeed, and the resistance to the Will must be considered as the exception to the rule. Yet the apprehension of such a contest, and possibly the ambiguous authority which the Witan may have assumed in judging of the competency of an heir, would suggest to an anxious and affectionate father the expedient or precaution of associating his son to himself in the royal dignity. Offa thus caused Ecgfrith to be crowned as co-regent; and, on the death of his father[b], the heir was in full possession of the royal authority.

Anglo-Saxon Kings exercised the prerogative of bequeathing the Crown, or of nominating a successor, by testamentary disposition.

(See II., p. 695.)

regnum tamen non magis quam patrem ejus dum eum genuit, sacratam fuisse sciebant, Eadmerus, de Vita Sancti Dunstani, p. 220. [And although this *Edward* ought to have been consecrated as King, some of the chiefs of the land strove to prevent him from being King; both, because they mistrusted the severity of his morals, which had often caused him to inveigh against their excesses, and because they knew that his mother, though lawfully married, had not been ordained to the royal dignity, any more than his father, when he begat him.]

Henry I. was considered by the English as the more lawful heir to the crown, in consequence of his being the only one of the Conqueror's sons who was born in royalty. (Will. Malm., lib. v.) Rex natus de Rege et Regina, Guil. Gemet., lib. viii. c. 10. [King born of King and Queen.]

[a] See Part II., *Proofs and Illustrations*, pp. 365 and 783.

[b] Ecgfrith was nominated as successor in the Council at Cealchythe, A.D. 785. In illo quoque concilio, *Offa*, Rex *Merciorum* potentissimus,

There are instances, though not numerous, of contested successions[a]; but in our ignorance of the titles upon which the *pretenders* relied, we cannot ascertain the doctrines involved by the rival claims.

The nearest approach to an elective monarchy, is found in the last age of Anglo-Saxon history, when Canute, by assent of the Witan, assumed the government of the empire[b]. But the appearance of constitutional authority will vanish upon a closer examination. Whatever may have been the form assumed by the recognition of the son of Sweyne, we cannot attach any legal importance to the proceedings of an assembly, whose members gave their suffrages in favour of a conqueror supported by ten thousand Danish battle-axes: still less can the Witan, when recalling Edward, the heir of the true royal line, be viewed as electors, appointing to the throne. They obeyed the established principles of the government. They performed their duty. Yet they cannot receive the praise of cheerful and honest allegiance. Coercion was employed on behalf of the lawful monarch, and as little real liberty prevailed in the assembly, as when they acknowledged the invader[c]. Though we cannot adopt the theory,

Proceedings of the Witan in recognizing Canute, and recalling Edward, not to be considered as acts of election.

in regem fecit solemniter coronari filium suum primogenitum *Ecgfredum* ...qui deinceps cum patre idem militans et in omnibus obsecundans, usque ad finem vitæ ejus conregnavit, Concilia, vol. i. p. 152. [In that council, also, *Offa*, the most powerful King of the *Mercians*, caused his firstborn son, *Ecgfrith*, to be solemnly crowned King: who fought along with his father and helped him in all things and reigned with him to the end of his father's life.] *Ecgfertum* filium ante mortem suam in regem inunctum successorem dimisit, Will. Malm., lib. i. p. 5. [He left *Ecgferth* his son, who before his death had been anointed as his successor to the crown.] And see also Part II., *Proofs and Illustrations*, p. 486.

[a] Egbert was ultimately successful. Ethelwald, who contested the crown of Wessex with Edward the Elder, succeeded in establishing himself in Northumbria (Part II., *Proofs and Illustrations*, p. 357). Of Alfred, who opposed Athelstane on the ground that he was the son of a concubine (id., pp. 365, 366), nothing further is known. Northumbria was in such a state of anarchy, that no inference as to the legitimacy or illegitimacy of its kings whatever can be drawn from the revolutions which it sustained.

[b] See Part II., *Proofs and Illustrations*, pp. 414–416, and Sax. Chron.

[c] Edward owed his recognition to the influence of Godwin, and Malmesbury informs us how that influence was exercised; Quidam auctoritatem ejus sequuti, quidam muneribus flexi, quidam etiam

Part I. Ch. XVIII.

that the Anglo-Saxon empire was elective, we arrive, however, at the conclusion that it was governed by law. The Constitution required, that the right of the sovereign should be sanctioned by a competent tribunal.

Theory of royal succession amongst the Anglo-Saxons, that the Sovereign acquired an inchoate right, but was to receive investiture, or be confirmed by the national assent.

Form of the ancient election preserved in the *recognition* which takes place at a modern coronation.

The theory of government established the doctrine that the national assent confirmed the inchoate title of the sovereign. The fealty of the lieges was not a blind submission to the man, but an obedience to the law. His claim was to be recognized by the Legislature. In this sense, the king was said to be elected by the people. At the modern coronation, the prelate turns to the east, and the west, and the north, and the south, and demands the voices of the multitude; and this ceremony is a record of the old time, when the monarch was hailed, not in the choir of the abbey, but beneath the canopy of heaven. But with all these concessions and allowances, the indefeasible right of the royal families, the descendants of Woden, must be considered as the constitutional principle of Anglo-Saxon sovereignty.

This ancestorial right was, however, only the nucleus, if such a term can be employed, of the sovereign authority possessed by the monarchs, who, under various titles, ruled the nations of Anglo-Saxon Britain, after the period usually, but incorrectly, considered as the final suppression of the "Anglo-Saxon Heptarchy." This authority was an accessory to their patrimonial right: for the principles of *imperial sovereignty* were not, in the first instance, connected with hereditary descent, although such sovereignty was never exercised but by a son of Woden.

Rise and progress of imperial sovereignty amongst the Anglo-Saxons. Defence of the application of the term.

By the term "imperial sovereignty," I mean that authority which a king possessed over other kings or potentates, or over the states composing the aggregate of his empire. I am fully sensible of the objection which has been forcibly presented to me, that there is an impropriety in employing a phrase, borrowed from the political nomenclature of a highly civilized society, when we are describing the constitution of a commonwealth so rude, in comparison, as that of the Anglo-Saxons: still I must use the phrase, until any better can be suggested. Such is the

debitum *Eadwardi* amplexi, pauci qui præter æquum et bonum restitere, et tunc *censoriè notati, et postmodum ab Anglia expulsi*, lib. ii. cap. 13. [Some bowed to his influence, some were persuaded by his gifts, some also embraced the rightful cause of *Edward*; a few there were who resisted him contrary to justice and right, and these, who were then *noted down with displeasure, were afterwards banished from England.*]

infinite diversity of human institutions that, strictly speaking, there is no one *general* or *generic* term relating to government or policy, which is not, in some degree, incorrect, if applied to any *particular* form or species of government or policy. The dominion of the "Bretwalda" began by being an imitation of the imperial sovereignty of Rome. Accustomed to the presence of the provincial emperors, since the glorious reign of their own Carausius, the Britons still considered their country as an empire. The reminiscences of Carausius cast their gleam upon the fabled Arthur: and we discover Aurelius Ambrosius and Vortigern contending for the diadem which had so recently graced the brows of the British Constantine. Ella[1], the Saxon, acquired the prize[a]: and we cannot give any explanation of Ella's elevation, unless by supposing that he was raised to the dignity by the assent of the British powers. It is not indeed expressly asserted that the British kings and princes assembled at Silchester, in the manner described in the British traditions[b]; but we are compelled to adopt this hypothesis from the simple fact, that the title of *Bretwalda*[c], implying the sovereignty of the island, could not have resulted from any authority possessed by Ella over his Teutonic compeers, scarcely visible in the corner of the island which their settlements occupied. Is it possible to suppose that Ella was denominated the "ruler of all Britain," because the Jutes of Kent acknowledged his superiority? It is true that all the seven ancient Bretwaldas[d] did not extend their supremacy throughout the whole of Britain. Various circumstances might prevent such sovereignty from attaining its full extent. The monarchs of the most civilized and flourishing realms are not infrequently compelled to protest, in vain, against the denial of an indubitable right, or the usurpation of a territory, to which they have the most valid claim. Some tribes might be protected by their distance, or the natural strength of their positions; others might be spared from subjection by the favour of the aspiring monarch[e]:

The Bretwaldas, their authority deduced from the Roman imperial authority, particularly as exercised by the Provincial Emperors, erroneously denominated Tyrants (see above, pp. 259, 260, 304, 307, 309, 310).

Aurelius Ambrosius (see above, p. 329), his Imperial authority perhaps transmitted to Ella, King of the South Saxons, the first Bretwalda of Saxon race, whose elevation to the Imperial authority cannot be accounted for, unless by supposing that it was conferred upon him by the Britons. (See II., pp. 469, 470.)

Nature and extent of the authority of the Bretwalda or Emperor of Britain.

[a] See Part II., *Proofs and Illustrations*, pp. 469, 470.

[b] I allude to the narrative of Geoffrey of Monmouth.

[c] *Bretwalda.* Qui toti Britanniæ imperat, Lye. [*Bretwalda.* He who rules over the whole of Britain.]

[d] Ella, Ceawlin, Ethelbert, Redwald, Edwin, Oswald, Oswio. (See Part II., *Proofs and Illustrations*, p. 565.)

[e] Thus Edwin allowed Kent to continue exempted from his supremacy, out of favour towards his brother-in-law. (Bede, lib. ii. c. 5.)

Part I. Ch. XVIII.

but the theory of the government imported that the *Emperor of Britain*—for this title is specifically given[a]—should possess the supremacy over all the "nations" and "languages" of the island. The symbol of imperial Rome, impressed upon the coin[b], the Roman standard borne before the sovereign[c], all indicated these pretensions. It must not be considered that these insignia were merely toys and baubles. Visible symbols of dignity possess considerable influence under all circumstances; and men who attempt to decry the importance of the outward tokens of political power, are often most influenced by the objects which they deride: they feel the effect of the emblazoned shield, the golden mace, or the silver wand; and if they ridicule the pageantry of the king and the bishop, it is in order to prepare the way for the downfall of the hierarchy and the monarchy. But in the ruder states of society, the insignia of authority are even still more important; they speak a language which cannot be misunderstood; they are the only means of declaring and notifying the station and rank of the sovereign: and the form of the crown, and the fashion of the robe, may be of the very essence of royalty.

Imperial or Roman symbols assumed by the Bretwaldas.

Three sovereigns of Northumbria, in succession, possessed imperial sway; Ecgfrid, the son of Oswio, failed to sustain the dignity. His conquests over the Britons have been noticed; but, slain in battle by the Picts, these tribes as well as the Britons gained more power. The glory of the "English" began to decline. The power of Northumbria obtained a transient revival under Eadbert: a period of anarchy then ensued. The throne was repeatedly occupied by kings of "dubious race"; the military institutions of the country decayed; the Scandinavians ravaged the land; and Wessex acquired the virtual supremacy of Britain[d].

477–488. Northumbrian Bretwaldas, Edwin, Oswald, and Oswio: decline of the power of the Angles of Northumbria, and rise of Wessex. (See II., pp. 575, 480–486.) (See above, p. 364 and II., p. 574.) (See above, p. 365 and II., pp. 575, 368.)

[a] To Oswald, Part II., *Proofs and Illustrations*, p. 568.

[b] I allude to the coin of Ethelbert copied from the medal of Carausius; see above, p. 311, and Part II., *Proofs and Illustrations*, p. 454.

[c] Edwin, see above, p. 358.

[d] See the summary of Northumbrian history, from the resignation of Eadbert to the death of Osbert and Ella (Part II., *Proofs and Illustrations*, pp. 575–580). Alcuin, in addressing the Kentish men (Ep. 59), expatiates upon the misfortunes arising from the domination of the sovereign, who, not being of the royal lines, usurped the English throne; "Illi ipsi populi *Anglorum* et Regna et Reges dissentiunt inter se, et vix aliquis, modo, ex antiqua Regum prosapia

We do not find that either Ethelbald or Offa assumed the ancient title of Bretwalda; but these sovereigns possessed an equivalent prerogative and dignity. All the nations of the island yielded obedience to "Ethelbald the Proud," the "King of Britain"[a]; whilst Offa was Superior "of all the realms to the south of the Humber." The erection of the metropolitan See of Lichfield affords some insight into the pretensions of Offa, whom Charlemagne addressed as the most powerful Sovereign of the West[b]. The primatial supremacy of Canterbury resulted to that see, as the consequence of the temporal dominion of Ethelbert, then the Bretwalda or emperor of Britain. When the Angles of Northumbria were converted, their sovereign had acquired the imperial dignity; and the annexation of a primatial authority to the see of York seems to have been effected upon the assumption, that the rights of the prelate should follow those of the sovereign. As the Northumbrian Bretwalda extended his temporal sway over the southern provinces, the prelate of York may have been instigated to demand an equivalent ecclesiastical authority. Canterbury never would acknowledge such a rival; and thus we have a plausible mode of accounting for the claims of the rival primates, asserted with so much vehemence on either side, and compromised with so much difficulty. Offa, versed in the art of government, was well aware of the great inconvenience which might be occasioned by the existence of any foreign authority within his dominions. The prelate of Canterbury was suspected of treachery[c], and the creation of the Mercian archbishopric of Lichfield was equally intended to prevent any such hostile influence. Offa reigned with great splendour; but the mixed population of Mercia did not add to the strength of the kingdom: and, upon the death of Offa, the line of Cerdic acquired

Title of Bretwalda not assumed by Offa and Ethelbald, although these Sovereigns possessed an equivalent authority.

Archbishopric of Lichfield or Mercia founded by Offa.

Decay of the Mercian power.

invenitur." [Those same peoples of the *English*, and the kingdoms and the kings are at variance among themselves, and so scarcely a person can be found of the old royal race.]

[a] Part II., *Proofs and Illustrations*, p. 301.

[b] In the friendly epistle by which he notifies his conquests of the Lombards and Saxons, and which thus concludes: "Hoc igitur salubri mandato, Ego *Karolus* Regum Christianorum *Orientalium* potentissimus, vos, ô *Offane*, Regum *Occidentalium* Christianorum potentissime, cupio lætificare," Bouquet, vol. v. p. 620. [With this health-giving epistle, I, *Charles*, the most powerful King of the *Eastern* Christians, desire to cheer you. *Offa*, most powerful King of the *Western* Christians.]

[c] See above, p. 410.

Part I. Ch. XVIII.

that superiority, which was ultimately transferred to the Norman Conqueror.

800, 828. Imperial supremacy of Egbert. He returns from exile (see above, p. 412). The Celtic, Cymric and Teutonic nations of Britain submit to him (see II., pp. 344–351).

(See II., pp 347–348.)

Egbert, returning from Gaul, ascended the throne which had been withheld from him[a]. The Britons were subdued by force. The men of Kent and of Surrey, and the South Saxons and the East Saxons[b], considered him as their deliverer from the unlawful power of the Mercians, and from the strange kings whom the Mercians had imposed upon them. The East Angles, and their king, accepted Egbert as their patron and their lord. The Mercians themselves next felt Egbert's might; and their king, Wiglaf, like another Tassilo, surrendering his crown to Egbert, received his realm as a vassal, and to be held in fealty and tributary subjection. And lastly, the Northumbrians, abandoning their ancient pride, humbly submitted to the dominion of the eighth Bretwalda, and acknowledged his supremacy.

North-umbria. The throne frequently usurped by intruders, not of the right royal line (see II. pp. 575–580).

The title of Bretwalda is ascribed to Egbert, but we must regard him as the founder of a new species of authority. Egbert had been the better enabled to assert his empire, in consequence of the internal dissensions prevailing amongst the Anglo-Saxon nations. Northumbria, in particular, had been a prey to civil war. King after king had been placed upon the throne, recalled, and expelled, and many of these sovereigns were not of the real royal lineage, but usurpers and intruders. I do not care to enter into any defence of the abstract principle of legitimacy: but the Anglo-Saxons supposed that no one but a son of Woden could be the lawful king. A king who wanted the sanction of birth was destitute of the sanction of public opinion: and, consequently, he was unable either to defend himself or the people over whom he attempted to rule. In the other states, the sovereigns did not possess any efficient means of directing and concentrating the resources of the different tribes or nations. The chieftains could wage a destructive warfare against each other: but the kingdoms were destitute of any institutions which would enable them to

[a] See above, p. 413.

[b] There is some confusion about the time of the submission of the men of Essex (Part II., *Proofs and Illustrations*, p. 559) which seems to have been in 823. In Florence of Worcester, the *Orientales Angli* are twice mentioned, probably by mistake. Malmesbury (id., pp. 349, 350) places the submission of the East Saxons in the 24th year of Egbert's reign, by which Florence's statement is confirmed. The passage inserted in the *Proofs* under the years 828–830, would have been more in its place under 823 (id., p. 346).

unite against a common enemy. Egbert's supremacy, had his reign continued undisturbed, might, perhaps, have enabled him to diminish these evils. But a fearful enemy was approaching, and the Danish invasions, which threatened the total conquest of the Anglo-Saxons, ultimately extinguished all the subordinate dynasties, and thus produced an entire alteration in the political state of Britain.

Danish invasions to be considered only as the continuation of the Anglo-Saxon expeditions.

The Northmen, whom our historians usually term "Danes," were Anglo-Saxons under another name. Ingwar and Hubba only repeated the expeditions of Hengist and Horsa. Some of the Danish chieftains were descended from the very same stock as the Mercian kings, and all were kinsmen; the pirate hosts were the relatives of the people whom they plundered. There is some difficulty in ascertaining when these hostile invasions began. The Saxon chroniclers represent the landing of the Northmen in Dorsetshire[a] as the first arrival of these dreaded visitants. The sagas speak of earlier acquisitions. A "saga" is literally a tale or tradition; and if we could believe the Scandinavian "tale-tellers," the fifth part of Britain was conquered by the Jutish chieftains as early as the fifth century. In the more remote periods, the sagas are greatly deficient in the characteristics of authentic history, and their details cannot be reconciled to our chronicles[b]. Yet, some of their apparent incongruities may be diminished by the supposition, that the exploits, thus commemorated, are traditionary accounts of the conquests really effected by the Angles on the eastern coast and in Northumbria, exaggerated and confused by the fancy or invention of the skalds.

The Dynasties of East Anglia, Mercia, Northumbria, &c. extirpated or deprived of Royal power by the Danish invasions.

Whatever may have been the original relationship between the Anglo-Saxons and the "pagans" of Scandinavia, the adoption of the Christian faith was in itself a reason for the inveterate hostility on the part of the invaders; and the fanaticism of the

The Kings of Wessex thereby enabled to establish an undisputed authority over the whole of Anglo-Saxon Britain.

[a] In the year 787.

[b] For the Scandinavian narratives I shall make a general reference to Suhm, Torfæus, and the Gesta Danorum extra Daniam [the deeds of the Danes outside Denmark]: I began by attempting to reconcile the Northern writers to our own chronicles; but, after employing much time upon the task, I was compelled to adopt the conclusion in the text. The works last quoted will either furnish or indicate the passages relating to the real or supposed conquests of the Northmen in Britain.

Part I. Ch. XVIII.

worshippers of Odin was increased by their insatiate greediness for plunder. The wars and conquests which implanted a Danish population in that extensive division of England, known as the "Danelage," destroyed the royal authority of every ancient family, except the line of Cerdic; and gave to Alfred, and his descendants, the means of establishing a firmer and more ample sway than any Bretwalda had enjoyed. This title of "Bretwalda" went out of use; but Edward, the son of Alfred, claimed and asserted the dominion of Britain.

The Danelage (see above, p. 38, and below, p. 497).

Empire of Britain attains its most splendid and flourishing state under Edgar. (See II., pp. 390–409.)

The empire founded by Egbert did not attain its height, until the triumphant Edgar became the "Basileus" of Albion. Edgar's virtues are displayed in the annals of the chroniclers; the epithet of the "pacific" is an honourable testimony to the character of the monarch, who was enabled to eclipse the delusive blaze of military renown, by the steadier glory of good government and legislation. And the Cyrus, the Romulus, and the Charlemagne of the English, was honoured as the restorer, almost as the founder of the state, which, beneath his sceptre, advanced to the greatest degree of external splendour and internal prosperity[a]. Every nation and community acknowledged the supremacy of the British emperor: and the lesser political divisions, being lost in the broad and striking characteristics of race or language, a proud dominion was established, knowing no equal, acknowledging no superior, and described, as suited the pleasure or intentions of the monarch, either by the name of the Fourfold Empire of the Anglo-Saxons, the Northumbrians, the Pagans and the Britons; or, as the superiority of the Sceptres

Smaller distinctions and divisions merged in the Empire of the Anglo-Saxons, Northumbrians, Pagans (Danes), and Britons, or the superiority of the Sceptres of the Scots, the Cumbrians, and the Wealh. (See II., pp. 384–386.)

[a] Iste *Edgarus* cunctis prædecessoribus suis felicior, nulli sanctitate inferior, omnibus morum suavitate præstantior, quasi stella matutina in medio nebulæ, et quasi luna plena in diebus suis luxit. Iste *Anglis* non minus memorabilis quam *Cirus Persis*, *Karolus Francis*, *Romulusve Romanis*. Hic enim regnum *Anglorum* cœlesti quadam pace composuit, et multarum linguarum gentes unius fœdere legis conjunxit, Ethelredus, de Genealogia Regum, p. 359. [That *Edgar* was more fortunate than all his predecessors, and was inferior to none in holiness, but excelled all in the sweetness of his disposition, and shone in his days like the morning star in the midst of a mist and like the full moon. He was not less memorable for the *English*, than *Cyrus* for the *Persians*, or *Charles* for the *Franks*, or *Romulus* for the *Romans*. For he calmed the realm of the *English* with heavenly peace, and joined races of many languages by the bond of a single law, Ailred of Rievaulx, Genealogy of the Kings.]

of the Scots, the Cumbrians, the Britons, and all the surrounding regions. But though the monarch thus claimed the entire supremacy of Albion, the several kingdoms and states over which he ruled retained their individual existence. There was no union, no incorporation, no amalgamation of the communities; each, as in Gaul, was severed from the other members of the empire; and we must now proceed to contemplate the circumstances under which the nations of "diverse tongues" yielded obedience to the imperial crown of their common sovereign and defender[a].

The dominion of the Basileus over the Britons, displayed, as may be collected from the outline of their history, many different gradations of authority. In those shires of Wessex which composed the Wealhcynn, and in the march lands of Mercia, we may define the power of the Anglo-Saxon king, as the seignorial sway of a sovereign over a conquered people, not harshly ruled, yet in marked subjection to their conquerors. The Western "Wealh" appear as a dense, and therefore more formidable population. Vassals of the king, without being the inferiors of the other subjects over whom he ruled, they were dependent upon the Anglo-Saxon Basileus, but not the serfs of the English. Cambria and Cumbria still existed as distinct kingdoms, though governed by princes who bent before the throne of the paramount lord of the Isle of Britain.

The dominion of the "Basileus" over the Britons and British tribes how exercised.

(See above, pp. 341, 387.)

West Wales, i.e. Cornwall and Devon. (See above, pp. 341, 342.)

Cumbria or Strath Clyde, and Cambria or Wales. (Chaps. XIV. and XV.)

In the ordinary language of state as well as of history, the West-Saxon "Lage" included, in addition to Wessex proper, the ancient kingdoms of Kent and Sussex, with the dependent "Suthrige": but these last-mentioned *eastern* states were considered as subordinate to the original dominions of the sons of Cerdic, and usually assigned as apanages to the Atheling next in succession to the crown. The general theory of the limitation is clearly defined; and the instances in which these or similar apanages were held by the cadets both of Mercia and Wessex[b],

Wessex considered, in ordinary language, as including Kent Sussex and Surrey, though the latter, or the "Orientalis pars Saxoniæ," were often considered as a distinct dominion held as an apanage by the Atheling (see II., pp. 352–354, 462–467, 475, and compare with the limitation of Cumbria (see above, p. 368).

[a] By carefully perusing the summaries of Anglo-Saxon history (Part II., *Proofs and Illustrations*, pp. 327 to 661), the reader will be best enabled to understand the progress and development of the Anglo-Saxon Empire. To these summaries I must refer for the principal evidence in support of the observations contained in this chapter.

[b] Ethelbert, Cuthred, Ethelwulf and Athelstane. The expressions employed by Asser, "nam Occidentalis pars *Saxoniæ* semper Orientali principalior est" (Part II., *Proofs and Illustrations*, p. 354) [for the Western part of the *Saxon* land is always considered of more

Part I. Ch. XVIII.

afford as much confirmation of the doctrine as could be expected, in such an unsettled community. After the reign of Alfred, we cease to obtain any proofs of this appropriation of the Eastern kingdoms. Kent, however, continued to possess the political rights of a self-existent State[a]. Mercia was so far united to Wessex, that in a general description it might be considered as forming the proper Anglo-Saxon kingdom. But the dominions did not coalesce; and Mercia continued as a separate state. Recovered by Alfred from the Danes, Mercia was treated by him as a dependent realm. Ethelred, the husband of Alfred's daughter Ethelfleda, assuming the title of Ealdorman, exercised a royal power conjointly with the "Lady of Mercia," to whom the same authority devolved upon the demise of her husband. An hereditary right was transmitted to Elfwin, the child of Ethelred and of Ethelfleda; but she was deposed by the power of her uncle Edward, and, led as a captive into Wessex, she disappears from history.

Mercia, so far united to Wessex, as to be considered the proper Anglo-Saxon Kingdom.

Governed by the *Ealdorman* Ethelred as a kingdom in subordination to Wessex, the same having been granted to him by Alfred (see II., p. 500), held after Ethelred's death, by Ethelfleda, the Lady of Mercia. (See II., pp. 500, 506–508.)

A division of the *Marches* now took place; and we find "Mercia," by which we must understand the ancient kingdom of Hwiccas[b], in the possession of the powerful Ælfere, the kinsman of Edgar, from whom it descended to his son Alfric, who holds a conspicuous though disgraceful station in the annals of England. His repeated acts of treason and cowardice greatly facilitated the progress of the Danes[c], and his banishment and his recall, equally prove the extent and the abuse of the power which he possessed. The northern part of Mercia, sometimes designated as the earldom of Chester or Coventry, was held by the powerful family of Leofric, in whose line the dominion continued in hereditary succession. Other Mercian "Duchies" or Earldoms[d] are indicated

Dukedoms or Earldoms of Mercia governed by Ealdormen under the supremacy of Wessex. (See II., pp. 506–531.)

importance than the Eastern part], at once prove the dependency of the Eastern States, and that this part of the kingdom was usually separated from the Western.

[a] See Part II., *Proofs and Illustrations*, pp. 170, note a, 467.

[b] See Part II., *Proofs and Illustrations*, p. 511.

[c] Sax. Chron. and Florence of Worcester, ad an. 992, 1003, and Part II., *Proofs and Illustrations*, pp. 179, 180.

[d] I have attempted to collect the notices existing with respect to the Mercian Earldoms (Part II., *Proofs and Illustrations*, pp. 506–531). The more important of these States can be distinguished with a certain degree of precision. When Mr. Petrie shall have published his invaluable collection of Anglo-Saxon Charters, further light may perhaps be thrown upon this difficult subject.

by the casual notices of their rulers. But "*Myrcenlage*," though thus divided, continued to exist as a country and as a nation, distinguished both by its legislation and its political rights, from the other predominant states of the crown of Britain[a].

The "Danelage" (see above, pp. 38, &c.) or portion of England settled by the Danes. Boundaries thereof first defined by the treaty between Alfred and Guthrum (see II., p. 355).

The boundary of the "*Danelage*" is indicated by the frontier line described in the treaties between Alfred and Guthrum. Northumbria was included by implication; and the "*Lage*" was sometimes extended to the Scandinavian settlements in the extreme north of the island[b]. Deira and Bernicia were

[a] Ordericus Vitalis is perhaps the latest writer by whom the name of Mercia is retained as a collective appellation for the shires which it included: he uses it upon all occasions.

[b] Ad *Danelaghe bilimpeth*, quod latine dicitur incumbunt et pertinent, quinque provinciæ cum omnibus suis appendiciis; scilicet, (i.) *Deira* quæ modo vocatur *Northumberland*, scilicet tota terra quæ est inter magnum fluvium *Humbri* et *Tede* fluvium et ultra usque ad flumen *Forth*, scilicet *Loonia*, (ii.) et *Galweia*, (iii.) et *Albania* tota quæ modo *Scotia* vocatur, (iv.) et *Morouia* usque ad *Norwegiam*, et usque *Daciam*, scilicet *Kathenesia*, *Orkaneya*, *Enchegal*, et *Man*, et *Ordas*, et *Gurth*, et cæteræ insulæ occidentales oceani circa *Norwegiam* et *Daciam*, (v.) et *Fifton scire*, quod latine dicitur quindecim Comitatus, scilicet *Everwyckscire*, *Notinghamschire*, *Derbyschire*, *Leycestreshire*, *Lincolneshire*, *Hertfordshire*, *Bokynghamshire*, *Suffolkshire*, *Norffolkshire*, *Bedefordshire*, *Essexshire*, *Grantebreggeshire*, *Huntedoneshire*, *Northamptoneshire*, *Middelsexshire*, MS. Cott. Claudius D ii, f. 1.[1] [To the *Danelaw belong*, that is, in Latin incumbunt et pertinent, five provinces with all their appurtenances, to wit (i.) *Deira*, which now is called *Northumberland*, that is, all the land between the great river of *Humber* and the *Tweed*, and beyond as far as the river *Forth*, to wit *Lothian*; (ii.) and *Galloway* (iii.) and all *Albania* which is now called *Scotland* (iv.) and *Moravia* as far as the *country of the Norwegians* and *Danes*, to wit, *Caithness*, *Orkney*, *Inch-Gal* and *Man* and *Lewis* and *Skye* and the other western isles of the ocean around the *country of the Norwegians* and *Danes*, (v.) and *the fifteen shires*, that is, in Latin quindecim Comitatus, to wit *Yorkshire*, *Nottinghamshire*, *Derbyshire*, *Leicestershire*, *Lincolnshire*, *Hertfordshire*, *Buckinghamshire*, *Suffolk*, *Norfolk*, *Bedfordshire*, *Essex*, *Cambridgeshire*, *Huntingdonshire*, *Northamptonshire*, *Middlesex*.]

This description of higher antiquity than that extracted from Simeon of Durham (p. 38), forms part of a most valuable manuscript collection of Anglo-Saxon laws and Anglo-Norman and English charters, connected by historical notices, and brought down to the famous ordinances,

Part I. Ch. XVIII.

governed, until the reign of Edward the Elder, by sovereigns of Danish race, who, with their subjects, repeatedly performed homage to the crown of Wessex, accepting its monarch as their lord and father; and who, as repeatedly, violated the engagements contracted with the southron king.

Danish Kings of Northumbria. (See II., pp. 581, 592.)

The names of "king" and "kingdom," tokens of ancient power and independence, were the incitements to rebellion. A prudent policy attempted to destroy the illusion which they produced: the *kingdoms* of Bernicia and Deira were declared to be *earldoms*; and the earls, girt with swords, were the homagers of the Basileus of Britain. Yet Northumbria was not united to the other Anglo-Saxon kingdoms. The title of "Patrician of Northumbria," assumed by Ethelred, is a proof of the continued constitutional existence of the state. Harold Harefoot reigned as king of the Northumbrians; and their submission to Sweyne, and their refusal to acknowledge the son of Godwin, are to be viewed as the efforts of a subjugated people striving to regain their independence; not as the efforts made by a province to detach itself from the rest of the community. When the Northumbrians attempted to liberate their country from the Norman yoke, we may discern the formal investiture of Edgar Atheling with the royal authority[a]; and William himself, causing his crown and regalia to be conveyed to York, appears to have been inaugurated in Northumbria, as if it were still a distinct and separate kingdom[b].

Kingdoms of Northumbria converted into Earldoms (see II., pp. 594 and 387): compare with the account of the conversion of the Norwegian kingdom of Naumedale into a Jarldom (id., p. 690).

Northumbria, a separate state (see II., pp. 595–610) strives to throw off the authority of Wessex.

The narratives concerning the division of Northumbria into earldoms are extremely obscure. Bernicia, afterwards more particularly called Northumbria or Northumberland, appears to have been vested in the family of Waltheof, who, if the ancient genealogies can be trusted, derived his descent from the ancient kings. Deira or Yorkshire, sometimes separated from Bernicia, was at length vested in the same ducal dynasty. Lothian, or the country beyond the Tweed, had been severed in manner

Northumbrian Earldoms, Bernicia, to which the name of Northumberland was afterwards more peculiarly appropriated, vested in the family of Waltheof (see II., pp. 598 and 609). Lothian granted to the Kings of the Scots (see above, p. 400 and id., pp. 397–399, 596).

5 Ed. II. The *Norwegia*, or *Dacia*, is evidently part of North Britain, then in possession of the Northmen. *Enchegal* seems to be *Ergatheyl*, or *Argyle*.

[a] *Eadgarum* ex *Edwardi* Regis nobilitate genus ducentem sibi *regem* præfecerunt, Guil. Gemet., lib. vii. p. 40; and see Sax. Chron. ad an. 1068, p. 270. [They set over themselves as King, *Edgar*, who traced his descent from noble King *Edward*.]

[b] Ord. Vital., p. 515.

before described. And in the tract between the Tyne and the Tees, the Bishop of Durham, by virtue of the cession made by Guthred, and confirmed by Alfred, had acquired those rights from whence the present palatinate privileges of the see are derived[a].

Territory between the Tyne and Tees granted to St. Cuthbert. Palatinate rights of the Bishop of Durham to be deduced from this donation (see II., pp. 581, 582).

The Danish kings of East Anglia were confirmed in the possession of the country which they had invaded, upon condition of fealty to the Anglo-Saxon crown. The first of the ealdormen who appear after the termination of the Danish authority, is known to have been of a royal family; and the title of "*Half King*" is an indication of his extraordinary power and preponderance. His son acquired the still more remarkable designation of "ealdorman of all England." In Essex the ealdormen appear with less distinctness, and the country was often conjoined to the more extensive earldom of East Anglia, which it adjoined.

Ealdormen of East Anglia after the termination of the authority of the Danish Kings (see II., p. 546).

Ealdormen of Essex. (See II., p. 560.)

Throughout the Danelage, the Danes had, in great measure, coalesced into one population with the Angles whom they subdued. On their first conquests, the terms employed by the historians imply that there was an actual division of the territory[b] amongst their "Holdas" or chieftains, and we yet possess particular and striking examples of this exercise of the rights of war[c]. The compact between Alfred and Guthrum, renewed by Edward the Elder, related, in great measure, to points connected with the preservation of the peace between the men of Wessex and Mercia, and their grim and ferocious neighbours. It was necessary to guard against those disputes which might arise in relation to movable chattels, such as the slave, the ox, or the steed; and some temporal laws were required to ensure the

Tenour of the compact between Alfred and Guthrum.

[a] But the authority of the Earls of Deira and Bernicia appears to have been frequently exercised over the franchise of St. Cuthbert. The secular authority would overwhelm the rights of the church.

[b] Such as, totam regionem sibimet et suis divisit, et illam cum suo exercitu coluit. [He divided the whole region between himself and his men, and tilled it with his army.]

[c] Reginald of Northumbria thus shared the territory of St. Cuthbert between his followers, Scula and Olave. The first obtained possession of the land from Eden to Billingham[1], the second from Eden to the Wear (Part II., *Proofs and Illustrations*, pp. 584–586). The grants thus made were exactly like those which took place after the Conquest. *Scula*, with other Danish Thanes, is afterwards found attending the Witenagemot of Edred (id., p. 386).

Part I. Ch. XVIII.

better observance of the faith which the Danes had adopted. At first, without doubt, the Northmen, as the prevailing class, retained their own laws; but the ancient jurisprudence of the Danes was founded upon the same principles as the Anglo-Saxon common law. The English were the more numerous and the more civilized, if not the more powerful community, and all essential differences were soon obliterated. Yet the *statute law* of the Kings of Wessex was received with more reluctance, and scarcely established to the north of the Humber, even in the last age of the empire.

CHAPTER XIX.

Anglo-Saxon Feudality—Difficulties attending the investigation of the history of ancient Tenures—Two principal Classes of Tenures—Land held by Common Right, and Land granted by Landboc or Charter—Thanes or Ministri—Early adoption of the Beneficiary System by the Anglo-Saxons—Oath of Fealty—Knights—Rights of inheritance how subsisting—Power of the Sovereign in granting or withholding Investiture—Discretionary Power of the Lord—Elucidations thereof—Causes by which such power was gradually restrained—Tenures of the immediate Occupants of the Land, not greatly affected by the Feudal System—Introduction of the Feudal System into the general Government of the Anglo-Saxon Empire—The principle not thus applied under the earlier Bretwaldas, but introduced by Egbert—Its full establishment under Edgar—Nature of the relations subsisting between the Basileus and the British Princes, and other great Vassals of his Crown—Objections to the foregoing Theory—Answers thereto—Earldoms—Investiture thereof by the Sword—Hereditary in Families—Innovations produced by the Danish Conquest—Canute's Earls—Earldoms held by Godwin and his Family—State of these Dignities in the concluding Era of the Anglo-Saxon Empire.

Question as to the existence of feudal tenures amongst the Anglo-Saxons.

THE existence or non-existence of an Anglo-Saxon feudal system has been long one of the most perplexed questions in our constitutional history. And, whilst we are benefited by the investigations and researches of Selden[1], and Spelman[2], and Hallam, and Allen, we must confess that more doubts can be raised than it will be ever possible to solve. In these and all similar inquiries there are sources of constant error. Matters of form are liable to be considered as essential characteristics. Ignorant of the customs controlling the written instrument, and still more uninformed concerning the usages which subsisted wholly independent of writing, we give a literal construction to the charter, and thus perhaps wholly destroy its real import: for though we may truly read its phrases, yet, if we do not possess

Part I. Ch. XIX.

the comment of practice, we shall probably interpret the words in a manner wholly differing from the actual *business* of the age. If we peruse a church-lease granted in the reign of James I., there is nothing whatever on the face of the demise, which can lead us to guess at the fact, that the "*tenant-right*" of renewal, upon payment of an inconsiderable fine, was so generally acknowledged, as to render the grant for three lives nearly equivalent to an indefeasible interest in the land. Suppose we are informed, that such an understanding did so prevail; and without receiving any further information, another church-lease, dated in the reign of George III., is presented to us. It is made between the same dean and chapter, as lessors, in favour of the representatives of the first lessee; it relates to the same premises; and contains exactly the same covenants and stipulations. But its nature has wholly changed. The "*tenant-right*" no longer exists; and if, upon the death of any of the cestui-qui-vies, a new lease is required, it must be purchased by the payment of a large sum of money. Similar examples will readily occur; and it is sufficient to have pointed out the preceding, as displaying the manner in which we may be baffled, when we attempt to penetrate into the real tendency and bearing of the transactions of distant times.

Folkland nearly corresponding to the Odal of the Scandinavians.

Judging from the positive evidence which does exist; and guiding ourselves by analogies when such evidence fails, we discern two principal species of Anglo-Saxon tenures: the one, nearly corresponding to the *Odal* of the Scandinavians, in which a right of inheritance had been acquired by use and occupation,

Land held by Landboc or Charter.

and without any written grant; the other, resulting from the Landboc or Charter, and constituting the possessions of the numerous class, usually denominated the *Thanes* or *Ministers*[a].

Military benefices granted by the Anglo-Saxons from the earliest period of their settlement in Britain.

Within the English or Anglo-Saxon states, the system of bestowing military benefices appears to have been coeval with their political existence. The kingdom of Kent arose from a Lætic grant. Land was the recompense which the soldier expected for his toils. He obtained the glebe as the price of his exertions against

Thanes, or Ministers, land granted to them upon condition of fealty and military service. (See II., p. 723, &c.)

the enemy. From the king, the *Minister*, the *Thane*, he who served the sovereign, received his territorial donation

[a] See the observations and authorities, collected and arranged under the heads of "Tenures" (Part II., *Proofs and Illustrations*, p. 693), the "Fyrd or Expedition" (id., p. 707), and "Thanes and Thanage" (id., p. 719).

according to his condition or degree[a]; and the gift made in this manner was to be taken as the price of fealty or fidelity[b]. The thane prided himself in displaying the most devoted fidelity to his lord. Death was to be encountered for the protection of his superior. Loyalty might heighten this devotion, but the fealty of the thane was also secured by that oath, emphatically termed the *Hyldath*[c], and the *Antrustion* who entered into this engagement, or who had commended himself to his lord[d], solemnly promised implicit obedience to his superior: "I will choose all that my lord will choose, and shun all that is shunned by him."

(See II., p. 723.)

Thanes also known by the name of Knights. (See II., p. 722.)

These thanes were also known as *Knights*. The strange revolution which has ennobled this term of servitude, was accomplished before the Norman Conquest. The *Cnecht* had been, in fact, but the follower or attendant of a master, who, by hard dints of his sword, worked out the price of the five hides of land which he had received. In the reign of the Confessor, the *Knights* filled the Shire-moot, and the possession of property gave honour to the name. The institutions afterwards matured into Gothic chivalry may be traced amongst the Anglo-Saxons as distinctly as amongst the other Teutonic nations.

Chivalry partly formed out of the ancient Teutonic custom of conferring arms upon the youth when he attained his majority or was adopted by a Senior, &c. (See the investiture of Athelstane, II., p. 783.)

The investiture with the baldrick, the falchion, and the robe, indicated that the Atheling had passed from youth to manhood; and the same insignia might be bestowed upon the thane of inferior degree, as a token of the protection and favour of his sovereign[e]. With respect to the actual tenure of Beneficiary

[a] Epistola Bedæ ad Egberctum, p. 309; Beda, Vita S. Benedicti. Part II., *Proofs and Illustrations*, p. 723.

[b] Part II., *Proofs and Illustrations*, p. 302, no. 4.

[c] *Hyld* (A.S.), Huld (Germ.), implies both obedience and fidelity. It is probable that the form of the *Hyld* oath (Part II., *Proofs and Illustrations*, p. 778) might vary, but the substance would continue unaltered.

[d] See above, p. 12.

[e] Robert of Rhuddlan was knighted by the Confessor; Hic *Edwardi* Regis armiger fuit, et ab illo cingulum militiæ accepit, Ord. Vital. p. 669. [He was the knight of King *Edward*, and received from him the girdle of knighthood.] Supposing the life of the noble outlaw, Hereward, be authentic, the Anglo-Saxon "Miles" received his honours from the hand of the Abbot, after having prepared himself for the rite by confession, vigils, and penitence, quite after the fashion of more recent chivalry. Some better authority than the Pseudo-Ingulphus would be desirable, but it seems certain that

Part I. Ch. XIX.

Summary of the distinguishing characteristics of the Beneficiary lands, Thane lands and Læn lands amongst the Anglo-Saxons. (See II., p. 696, &c.)

land, involved as it is in great perplexity, from the ambiguous application of the term of *Bocland*, I shall content myself with referring to the examples establishing the general nature of the relations which existed between the thane or vassal, and the lord. Military service, or the obligation of following the superior to the wars, appears due as of common right. Fealty is implied. The property is in the lord, the usufruct in the tenant; he holds it only as a *Loan*. A relief is to be rendered upon the death of the tenant, as the consideration for renewal of the grant. But this token of dependence upon the superior is, at the same time, a proof of the acknowledged rights of the heir. Further burdens were imposed; and though the custom may not have prevailed universally, yet, in some districts or in some townships, the female tenant was in the wardship of the lord, who disposed, as he pleased, of her person and her land.

Such are the outlines; but the feudal system of the Anglo-Saxons was not a feudal *law*. The right of *inheritance* was only a *preference* given to the blood of the ancestor; and the same reasons which sanctioned the exclusion of a Bavarian duke from his territorial dignity, might often occasion the rejection of the incompetent thane. If the feeble or undisciplined heir attempted to obtain a grant of his father's Benefice, the lord might reasonably refuse the request of a petitioner who sought to enter into a contract which he could not fulfil. A younger son might be more eligible than his elder brother, or the *Loan* might be shared, if the joint representatives of the ancestor appeared equally worthy of the grant. As long as the original spirit of *antrustionship* subsisted, the rights of the different parties involved in the mutual bond, were never abstract rights of property, but rights resulting from a trust. A personal duty was annexing itself to the land; the possession of the Benefice was connected with an active employment. Any rights derived by an heir from his

Hereditary succession in lands held by a beneficiary tenure not entirely certain, inasmuch as the land was to be held in connexion with a duty or trust. It was *lent* (see II., p. 283) as the condition for the performance of certain duties which the heir might be unwilling or unable to perform (see II., p. 744 and compare with pp. 517–519 above).

knighthood might at that period be conferred by a prelate. Mr. Petrie informs me that he has discovered a Life of Hereward, written within half a century of the Conquest, containing the same incidents; and I shall avail myself of this information as an excuse for postponing the discussion of the question, until the appearance of the Scriptores Rerum Anglicarum. At common law, if an infant was knighted, he was forthwith entitled to the livery of his lands. This was a legitimate consequence of the old Teutonic custom: being invested with the arms of manhood, he was to be deemed of full age.

ancestor, still continued subject to the implied conditions, that the vassal was *able* to execute such duty, and that he was also *willing* to assent to the obligation which the *Loan* imposed.

An Anglo-Saxon feudal lord, when an heir applied for a renewal of the *Loan*, was therefore entitled to pause, to judge, nay to raise difficulties; and in proportion as the possession of the land became more valuable, the son would be often led to consider whether any such difficulties might occur in the king's mind, and how they would be best removed. The relief was fixed by the law. If *Alfric* stands upon his legal right, it is sufficient for him to tender "*four* horses, two saddled and two "unsaddled, two swords, four spears, four shields, a helmet, a "coat of mail, and fifty mancusas[1] of gold." King Canute was a just king, and he could demand no more than had been fixed by his own statute. But the statute did not appoint any period for the livery of the land. When the thane, after a long and weary journey, had arrived at the gate of the palace of Winchester, he might be informed that the king was engaged in preparing for a pilgrimage to Rome, or for an expedition against the Vandals at the mouth of the Elbe: and days or weeks of anxious suspense might elapse, during which no answer could be obtained. An audience is at last conceded; but when the suitor is admitted into the "Husting,"[2] the Danish monarch might eye the fair English youth, and ask the Norwegian earl who stood by his side if it were possible that such a stripling could wield the battle-axe of his sire? Alfric dares not to hear the observation, but before the morrow, *eight* horses are perhaps entrusted to the care of the "Stallere."[a3] Instead of the weapons according to the regulation standard, a gold hilted sword with a silver sheath has been placed in the royal wardrobe; or, what is still more probable, the "Bower-thane," or Chamberlain[a], conveys a private message to Alfric, that if King Canute should be able, which he much doubts, to grant another interview before he quits England, he will not object to receive a hundred mancusas in the place of the steeds and armour, which will be so useful to the thane when he shall return to his own country. And it is perfectly easy to understand how very generally such *accommodations* would take place for the purpose of facilitating the despatch of matters of business, which depended entirely upon the leisure or the discretion of the sovereign.

Relief due from the heirs of the Thane as fixed by the laws of Canute. (See II., p. 700.)

Course by which the relief, though fixed by the law, would probably be greatly increased by usage. The heir had no mode of making a legal demand for the livery of his inheritance, no regular Court or Board (like the Chancery in after times) having been established, consequently there was no mode of lawfully counteracting any impediment which the Sovereign might raise by *affected delays*, &c. and the heir would seek to bribe the King, by increasing the amount of his relief, or by proposing a commutation in money, exceeding the real value of the horses, or other specific articles, which he was bound to render.

[a] See Part II., *Proofs and Illustrations*, pp. 678, 679.

Difficulty of enforcing any right which was to be obtained by suit or application to the Sovereign in person.

So long as the administration of affairs was exercised by the sovereign in person, the subject, however strong his legal right, could only appear in the character of an humble petitioner. Even though the king may have abstained from any act of manifest injustice, the forms and ceremonies of the court, rude as it might be, could always interpose so many obstacles and hindrances to the claim of a suitor who was out of grace or out of favour, that no law, however emphatic or explicit, could possibly afford an adequate protection against an unconscientious exercise of the power which the chief magistrate possessed.

Extinction of the discretionary power of the Lord.

When the spirit of the original Beneficiary system began to decay, its forms became better defined; and the main difference between Anglo-Saxon feudality, and the laws of subsequent eras, consists in the establishment of a more certain canon of descent and inheritance. The claim of the heir became an absolute right, and the lord lost any discretionary power of denying the renewal of the grant.

Before the Conquest, the feudal lord may be compared to a bishop required to institute a clerk. The prelate is empowered to examine into the fitness of the presentee, and to refuse him if disqualified by heresy or immorality. And if we suppose that the advowson was the property of the last incumbent, and that the heir to whom the presentation devolves, nominates himself to the living, we shall have a still nearer similitude to feudality in its first stage. The right has devolved to the clerk by inheritance, but in order that he may avail himself of it, he must shew his willingness and ability to perform the duty annexed to the Benefice.

The feudal lord, after the Conquest, may be compared to a bishop, supposing that the canonical causes of refusal were annulled by usage or by law. In such a case, upon proof that the clerk had been duly presented, the prelate would be bound to institute, however unqualified the nominee might be to discharge the pastoral office; and in the case of the advowson descending to the clerk, the functions of the bishop would be so entirely reduced to a mere form, existing only in office-fees and legal instruments, that the clerical heir would appear to come into the possession of parsonage, glebe and tithes, just as into any other part of his patrimonial property.

At what period the lord lost his discretionary power, and the heir acquired the absolute right of inheritance, must be examined on a future occasion. But, in form, the livery granted to the

heir was long considered as grounded upon a new compact. In the reign of John, the heir, after performing homage, obtained seisin of his ancestor's land by the writ *de terris liberandis*: but anterior to that period, he was more usually invested by charter, worded as if the grant and confirmation proceeded wholly from the will and pleasure of the king[a].

[a] As will appear from the two following examples. The grant to the Earl of Clare is remarkable, inasmuch as it shews how much discretionary power was yet retained by the lord. Upon the partition, the eldest co-heir in England was also the eldest co-heir in Normandy, and entitled to the Caput Baroniæ in each country. But the king directs the division, and makes an allotment, which, *in principle*, is as arbitrary, as if he had given two thirds to one, and one third to the other.

(1.)

H. Rex *Angliæ*, Dux *Normanniæ* et *Aquitanniæ*, et Comes *Andegaviæ*, Archiepiscopis, &c. salutem. Sciatis me *concessisse* et *confirmasse Willelmo Malduit* filio *Willelmi Malduit* Camerarii mei, Baroniam totam quam pater suus de me tenuit, tam in *Anglia* quam in *Normannia*, die qua homo meus devenit apud *Wudestoc* prædictus *Willelmus Camerarii* filius; videlicet, *Hamesclapam* cum pertinentiis suis, &c., Madox, Baron. Angl., p. 41.

[(1.) *Henry*, King of *England*, Duke of *Normandy* and *Aquitaine*, and Count of *Anjou* to the Archbishops, &c., greeting. Know ye that *I have granted* and *confirmed* to *William Mauduit*, son of *William Mauduit*, my Chamberlain, the whole of the Barony which his father held of me, both in *England* and in *Normandy*, on the day on which the aforesaid *William*, the son of the *Chamberlain*, became my man at *Woodstock*; to wit, *Hanslope* with its appurtenances, &c.]

(2.)

Carta *Ricardi* Comitis de *Clare*.

Ricardus Rex *Angliæ*, Dux *Norm.*, *Aquit.*, Com. *And.*, Archiepiscopis, Episcopis, Abbatibus, Comitibus, &c. et omnibus fidelibus suis, salutem. Sciatis nos *reddidisse* et *concessisse* et præsenti cartâ *confirmasse*, *Ricardo de Clare*, Com. *de Hereford'*, et *Willielmo le Marescall*, et *Ysabel* uxori ejus, filiæ Com. *Ric'*, totam terram, quæ fuit Comitis *Giffardi* in *Angliâ* et in *Normanniâ*. Ita quod *Ricardo de Clare* Comiti *de Hereford* remanebit esnecia et capud in *Angliâ*, et *Willielmo le Marescall* et *Ysabel* uxori ejus esnecia et capud in *Normannia*, et totam aliam terram debent partiri inter eos. Quare volumus et firmiter præcipimus quod præfatus *Ricardus* Comes, et hæredes sui, habeant

Part I. Ch. XIX.

Establishment of regular Boards or Courts for the transaction of feudal business: effects of these institutions.

Consequent upon the extinction of the lord's discretionary right, was the erection of offices or tribunals, for the purpose of carrying into effect those customs which had acquired the validity of law. The sovereign was enabled to enforce his rights by a settled process, whilst the baron or vassal was equally put in the situation of preferring his claim by a regular course of law. Of such institutions anterior to the Conquest no trace can be found. All the various functionaries who, when the constitution was matured, became the officers of the *kingdom*, were then only the ministers of the *king*, acting ostensibly under the dictation of the sovereign. The creation of a body of legal functionaries or lawyers, who perhaps at first were hardly conscious of the character which they possessed, led to further consequences.

Feudality, greatly

Rules were established, doctrines expounded, the fictions of the

et teneant præfatam esneciam et medietatem suam, cum omnibus pertinenciis suis, bene et in pace, libere et quiete, integre et honorifice de nobis et hæredibus nostris in bosco et plano, &c. Ita quod tam libere et quiete et honorifice medietatem suam habeat Comes *Ricardus*, sicut Comes *Walterus Giffard* eam melius et liberius et integrius habuit et tenuit. Testibus *Hugo Dunelm'* Episcopo et pluribus aliis, Cartæ Antiquæ, S. 24.

[(2.) The Charter of *Richard*, Earl of *Clare*.

Richard, King of *England*, Duke of *Normandy* and *Aquitaine*, and Count of *Anjou*, to the Archbishops, Bishops, Abbots, Earls, &c., and all his lieges, greeting. Know ye that we have *delivered* and *granted*, and by this present charter, have *confirmed* to *Richard of Clare*, Earl *of Hereford*, and to *William the Marshall*, and *Isabel*, his wife, the daughter of the said Earl *Richard*, the whole of the land which belonged to Earl *Giffard* in *England* and in *Normandy*. In such wise that the first choice and head of the barony of *Richard of Clare*, Earl *of Hereford*, shall remain in *England* and the first choice and head of the barony of *William the Marshall* and *Isabel* his wife shall remain in *Normandy*, and they shall divide all the other land between them. Wherefore we will and firmly ordain that the aforesaid Earl *Richard* and his heirs, shall have and hold his aforesaid inheritance and moiety, with all its appurtenances, well and peaceably, freely and quietly, completely and honourably, of us and our heirs, in wood and plain, &c. Provided that Earl *Richard* shall have his moiety as freely and quietly and honourably as Earl *Walter Giffard* best and most freely and most fully had and held it. Witness, *Hugh*, Bishop of *Durham* and many others.]

law employed to extend its empire; and the practical establishment of the theory, that the king is the original proprietor of all the lands in the kingdom, must be attributed to the constant working of the crown lawyers, who always presumed that the land was held by feudal tenure, until the contrary could be shewn.

extended by the doctrines and fictions of the practising lawyers.

During all these changes, however, the earlier territorial institutions continued to exist, and to preserve much of their primitive aspect. When the superiority of a Celtic commot or a Teutonic township was granted to a Beneficiary tenant, whether he may have been a Roman legionary or a Norman baron, the situation of the lower *stratum* of cultivators was not greatly affected. Scarcely any alteration was made in the actual occupation of the soil, or in the customs by which such occupancy was regulated. The common lands continued common lands; the coloni, "manentes," or churls, retained their customary holdings, their *folk-lands* of an inferior degree[1]; and the several communities who dwelt upon the beneficiary lands, retained their self-existence and identity.

But notwithstanding the extension of feudality, the customs of the inferior *stratum* of tenantry continued in great measure unaltered.

The inferior tenures, as well as the ancient popular courts, were certainly affected by the spirit, and still more by the forms, of the superior tribunals; but the institutions deeply impressed upon the minds of the people, though new-moulded and modified, could not be easily effaced. They were also much connected with the actual use and occupation of the soil. The "*Work-lands*,"[2] the "*Swilling-lands*," the "*Ber-lands*," and the "*Bord-lands*," would be held and transmitted as in the earliest time: and the habits of the cultivators enabled them to retain the primeval jurisprudence of the tribes from whom they were descended.

In the extreme succinctness of the ancient chronicles, we cannot discern the terms, the conditions, or the legal forms, by which the Bretwalda confirmed his paramount authority. The submission, however, seems always to have proceeded from the nation. The narrators speak of the people in the aggregate. We cannot, indeed, suppose that every individual Pict or Scot joined in the acknowledgment: yet we cannot doubt but that the act was ratified by all the chieftains, by all invested with authority and power, and whose concurrence bound their dependents as well as the other inferior branches of the community. If the *Ceancinnith* or the *Pencenedyl* confessed the supremacy of Egbert or Edwin, the clan or tribe would never

Chieftains and Leaders of the subject-nations concurred in the compact.

Part I. Ch. XIX.

hesitate to follow the Dragon of Wessex or the Tufa of Northumbria. After the establishment of feudality, we frequently find the "primores" joining in the homage, and we may view this proceeding, not necessarily connected with the principles of beneficiary tenure, as arising out of the older usage[a]. So far, however, as we are able to collect from the tenour of Anglo-Saxon history, such submission, in the period anterior to Egbert, was a mere political act: it gave no *jurisdiction* over the subject nation or the tributary king. Picts or Dalriads refuse obedience; the Bretwalda assembles his forces, enters their glens, drives their cattle, and carries off the few inhabitants who are spared, into captivity or servitude. Yet this punishment was inflicted according to the ordinary course of war. It was not the result of the *judgment* of a lawful superior, pronounced in a competent tribunal. The subjected people, or their representatives, were not bound by *antrustionship*. There was no mutual engagement. Compensation had not been afforded to them for their submission; and neither in express terms nor by implication had they derived any benefit from their connexion with their supreme lord.

Such submission a political act, and not regulated by any definite principle of law.

Gradations of the Anglo-Saxon supremacy. Dependence of the Britons, Scots and Picts, relating more to the person than to the land; a nation subject to a nation, but without any express transfer of the sovereignty of the territory.

The submission of the different races and nations—whether Britons, Picts, or Scots—to the seven ancient Bretwaldas; and all similar bonds existing with the other paramount sovereigns of the earlier ages, whether an Ethelbald or an Offa, related more to the person than to the soil. Tribute was paid by the conquered race. The son of the vassal king fought in the host of Redwald or Oswy. Yet these tokens of inferiority resulted rather from the subjection of one people to another people, than from the dependence of one country upon another country. If the Scots bowed before the throne of the "Imperator" of Britain, they promised obedience; but they certainly did not transfer their country to him. Authority had only begun to be territorial. The primeval feelings yet prevailed. Nations still considered themselves as encamped upon the land. And however much the dominion of the soil may have been ultimately affected by the transaction, the territory was not the subject of the compact between the contending parties.

Feudality introduced

The throne of each king was encircled with a band of

[a] As when Tassilo and the Bavarians submitted to Pepin (Part II., *Proofs and Illustrations*, p. 759). If, in the precept of Antrustionship (id., p. 738) the reading "cum *arimania* sua" be preferred, we must infer that every chieftain was required to secure the fealty of his retainers or dependents.

Antrustions, and the Beneficiary system had obtained considerable extent as a *municipal law*, long before the era when feudality formed a part of the *public policy* of the Anglo-Saxons. The feudal period of their government must be placed under Egbert, when we suddenly discover the application of feudal principles in insuring and enforcing the imperial supremacy of the crown.

into the Anglo-Saxon government under Egbert, probably by imitation from the Carlovingian realm, and one of the lessons of *king craft* which he learnt during his residence in Gaul (see above, pp. 412, 413).

Feudality was becoming a mighty engine of power in the Carlovingian empire[a]; and we can scarcely doubt but that it was one of those lessons of government which Egbert had learned during his exile. We find the subjugated kingdoms accepting him as their lord, protector and defender, even as the subjects of the Carlovingians addressed their sovereign. Wiglaf, the monarch of Mercia, rejoiced to accept his kingdom as a Benefice from the hands of the Conqueror. Alfred pursued the same plan. The grant of Mercia to the Ealdorman Ethelred was of this description. But the full establishment of feudality appears in the reign of Edgar: and it is probable that the enforcement of the beneficiary system upon *all* the dependents of the imperial crown—the greater Burghs being perhaps the only exceptions—may be ranked amongst the circumstances which induced the chroniclers to consider the reign of the Basileus as constituting so decided an era in the history of Britain.

East Angles accept Egbert as their Lord, Protector and Defender (see II., pp. 542 and 346) nearly in the same manner as the subjects of the Carlovingian Empire accepted their sovereign (see above, p. 452).

Wiglaf surrenders Mercia, and receives his kingdom to be held of the Conqueror (see II., pp. 348, 349; compare with the example of Tassilo, id., pp. 757–771).

Alfred pursues the same system. Mercia granted by him to Ethelred as Ealdorman thereof (see II., pp. 499, 500).

As the kingdoms, dukedoms, principalities and earldoms composing the Anglo-Saxon empire[b] were established at different periods, and under varying circumstances, the system did not exhibit that symmetrical uniformity which has been sometimes considered as the characteristic of feudality. It was not exactly such a system as we find laid down in the law-book, nor was it

Earldoms, &c. of the Anglo-Saxon Empire established at different periods, and under varying circumstances.

[a] See the history of Tassilo, Part II., *Proofs and Illustrations*, p. 758, &c.

[b] The Ealdormen as well as the Earls are generally termed *Duces* in the Latin text. *Aldermanry* would be more appropriate than *Dukedom*, but it is rather too uncouth to be employed. For their succession see the summaries. The titles of Ealdorman, Dux, and Comes, are employed as synonymous in chronicles and charters, and I can only recollect one exception. When Bede employs the term "Comes," Alfred usually translates it by *Gesith*. *Puch* was Comes or Gesith of North Burton, and *Adda* was Comes or Gesith of South Burton (Part II., *Proofs and Illustrations*, p. 610). In the earliest charters of Ethelbert, Comes is equivalent to Dux or Ealdorman. But in the passages in which it thus occurs in Bede, Alfred employs a term of rare occurrence and obscure signification.

Part I. Ch. XIX.

agreeable to the doctrines taught by Obertus[1] or expounded by Bartholus[2] and Baldus[3]: but like the feudality of the Carlovingian empire, from whence it was modelled, it possessed a sufficient number of the main incidents of the system, to justify the employment of the term. In the relations existing between the Basileus on the one part, and the Scottish reguli or the under-kings of the Cymri on the other part, we may discover all the distinguishing features of feudality. No one is absent. The act of homage, the grant of the territory, the oath of fealty, the promise of military service, the attendance at the court of the suzerain, the submission to the jurisdiction of the tribunal, the aid given by the lord to the dependent, according to their mutual engagements and lastly, the punishment of the vassal who had violated the bond, all these are found in our Anglo-Saxon history[a]. It may be readily admitted that the exact amount of the "co-operation" to be rendered by Kenneth for Lothian, or by Malcolm for Cumbria, was not exactly defined. There was no record or roll specifying the number of the clansmen who were to follow the King of Albania from their straths and hills. But this absence of definite proof does not make any material alteration in the case. Lord and vassal were continually disputing, even after the feudal system was established, concerning the *particular items* of the tenure. The contingent may have been settled at each renewal of the compact: and if we consider the existence of feudal principles as dubious, because the terms were disputed on one occasion, infringed in a second case, or refused in a third, we should be compelled to blot feudality altogether out of history. The frequent recurrence of hostilities between the Basileus and his vassals affords as little ground for doubting the existence of the feudal bond. It only amounts to the very intelligible circumstance, that Scots, Northumbrians, and Britons frequently strove, like Tassilo, to break their engagements. Such a dependence never could be grateful to the inferior sovereign; and an "under-king" of Wales would be actuated by the same feeling as a Duke of Normandy or of Guienne, in attempting to defy his superior.

Feudal relations, subsisting between the Basileus and the Under-Kings,

though the services may have been uncertain and liable to variation at each renewal of the compact.

The foregoing position exemplified by the transactions between the Confessor and the Welsh Princes.

Will it be said that the relation was merely political, and that when the Confessor sent his host against the contumacious Prince

[a] See the various transactions with the Princes of Cambria and Cumbria, and with the Scottish Kings, Chapters XV. and XX., and Part II., *Proofs and Illustrations*, pp. 362, 424–428.

of Gwynedd, this expedition was an ordinary operation of war[a]? The objection would lead to no valid conclusion. If the Cymric ruler continued to insult his lord, Edward could not expect any redress until he unsheathed the sword. A monastic chronicle is not expressed in the precise language of a judicial record or a parliament roll. Griffith had "sworn oaths" to Edward the Confessor, that he would "behave as a true *Under-King*, and without deceit." These oaths he broke; and the relative situation of the parties fully shews, that the war declared against the unfaithful vassal was an award of execution. Rhys, the brother of Griffith, had already been slain pursuant to the determination or judgment of the king and his Witan, the council of the empire[b]. When the gory heads of the British Princes were presented to the Confessor, we find a precedent for the indignities inflicted upon the hapless Llewellyn; and when Griffith had fallen, what took place? King Edward, in the words of the coeval annalist, *bestowed* the land upon Griffith's two brothers, Blethyn and Rhywallon, and they "swore oaths" and

1056. Oath of fealty taken by Griffith, the "Under-King" of the Welsh. (See II., p. 425.)

1063, 1064. Wales granted by Edward the Confessor to Blethyn and Rhywallon, who take the oath of fealty, &c. (See II., pp. 425, 426.)

[a] 1063. Strenuus Dux *Westsaxonum Haroldus*, jussu Regis *Eadwardi*, post Nativitatem Domini, equitatu non multo secum assumpto, de *Glaworna*, ubi Rex tunc morabatur, ad *Rudelan* multa cum festinatione profectus est, ut Regem *Walanorum Griffinum*, propter frequentes depopulationes, quas in *Anglorum* finibus agebat, ac verecundias, quas *domino suo* Regi *Eadwardo* sæpe faciebat, occideret, Flor. Wigorn. [A.D. 1063. After Christmas, *Harold*, the active Earl of *Wessex*, by King *Edward's* order, took with him a small troop of horse, and proceeded by rapid marches from *Gloucester*, where the King was then staying, to *Rhuddlan*, to slay *Griffin*, King of the *Welsh*, on account of his frequent forays on the *English* marches, and for his many insults to *his lord*, King *Edward*, Florence of Worcester.]

[b] 1053. *Griffini* Regis Australium *Walensium* frater, *Rhesus* nomine, propter frequentes prædas quas agebat, in loco qui *Bulendun* dicitur, *jussu* Regis *Eadwardi* occiditur, et caput ejus ad Regem in vigilia Epiphaniæ Domini est allatum, Flor. Wigorn. [A.D. 1053. The brother of *Griffin*, King of the South *Welsh*, *Rees* by name, was put to death *by the order* of King *Edward*, at the place which is called *Bulendun*, on account of the many raids that he made, and his head was brought to the King on the vigil of Our Lord's Epiphany.]

In this year *counsel was taken* that *Rhys*, the Welsh King's brother, should be slain [*Man rædde* þat man sloh *Hris*, þæs Wyliscean Cynges broþer] on account of the mischief which he did, and they brought his head to Gloucester on the eve of Twelfth day. (Sax. Chron.)

gave hostages to king and earl[a], that they would be faithful to them in all things; every where they would be ready to afford *aid*, by sea and by land; and they would perform such obligations in respect of the country, as ever *was done before to other kings*. In other words, they took the oath of fealty, the accompaniment of homage, and received investiture of the principality. The general tenour of the transactions between the Basileus of Britain and the Cymri was unquestionably such as to furnish a foundation for the claims of the English King. Edward I. may have urged them in bad faith; he may have prosecuted his right with great harshness, and with the intent perhaps of reducing the people into ignominious thraldom. All this, and more, may be laid to Edward's charge; it is in vain to justify his ambition or his tyranny. Yet there was a valid ground for the pretension; and admitting that the feudal compact could grow out of usage and practice, it is scarcely possible to deny, but that the land of Wales had been subjected to the ancient kings of England by feudal law[b].

As the circumstances most familiar to the chronicler were those which were least interesting to him, and therefore neglected

[a] To Harold, as Earl of Wessex (Part II., *Proofs and Illustrations*, pp. 425, 426).

[b] As asserted in the preamble of the statute of *Rhuddlan*, "...terra *Walliæ* subjecta *nobis jure feodali*" [the land of *Wales* subjected to *us by feudal law*]. The expedition against Llewellyn was undertaken in pursuance of the judgment given against him in battle as a rebel and disturber of the peace; Concordatum est, de communi consilio Prelatorum, Comitum, Baronum et aliorum, quod Dominus Rex...eat super ipsum *Llewelinum* tanquam super rebellem suum et pacis suæ perturbatorem, et quod omnes illi qui tenent de Domino Regi in capite et qui ei servitia debent, summoneantur quod sint apud *Wigorn'*, &c. cum equis et armis et toto servitio suo, profecturi cum ipso Domino Rege in *Walliam*, super prædictum *Llewelinum* et suos fautores, Rot. Claus. 4 Ed. I., Parl. Writs, vol. i. p. 5. [It was agreed, by the common counsel of the Bishops, Earls, Barons, and others that our Lord the King should march against *Llewellyn* as a rebel against him, and a disturber of his peace, and that all those who hold of our Lord the King in chief, and who owe him service, shall be summoned to be at *Worcester*, with their horses and arms, and the whole of their service, ready to set out with our Lord the King into *Wales* against the aforesaid *Llewellyn* and his supporters.] Edward the Confessor's various proceedings against the Welsh princes contain all the substance of such a process, as we here find recorded in form of law upon the Roll of Edward I.

and allowed to remain untold, we have no express mention, in our scanty annals, of the tenure by which the Anglo-Saxon earldoms were held. It should seem that, in general, the earls were entitled to the third part of the revenue of the shire[a], the other two-thirds belonging to the paramount sovereign. The form of investiture is, however, incidentally noticed. In the same manner as Hugh of Avranches was girt with the sword, when the Conqueror granted to him the Mercian earldom of Chester, so did Oslac obtain the earldom of Deira from Edgar[b], upon the division of the Northumbrian kingdom. But the chroniclers were more anxious to enhance the glory of the sovereign by recounting his victories, than to preserve the dull details of internal policy; and the accession of a Leofric or an Algar is dismissed in the shortest phrase. But the charters, the records of the Witenagemot, display the names of the parties composing the legislature. Here we behold the sovereigns of Gwynedd and Deheubarth, of West Wales[1] and of Cumbria and Strath Clyde, of the Cymri and of the Scots, united in the same rank and order with the ealdormen of Mercia and East Anglia. We can locate and describe the members of the "Council of Sages,"[c] and it is impossible to reject the conclusion that they all were invested with kindred authority, and possessed the same rank and station. The ealdormen and thanes who judged the cause between Howel and Morgan Hên[d], were the peers of the Cymric vassals, and held the same place in the court of their common sovereign.

Ealdormen of Mercia and East Anglia, Reguli of the Britons, and Kings of the Scots, all Peers in the Witenagemot.

The greater number of the "Ealdormen" and earls were probably descended from cadets and younger branches of the ancient royal families. In the earlier period, the title of King was given to rulers of very inconsiderable territories[e]; others, were restricted to the inferior titles of *Ealdormen* or *Subreguli*; but, until the great revolution occasioned by the Danish invasions, all these *Athelings*, however denominated, seem to have been, with scarcely any material exception, members of the caste to

[a] See Part II., *Proofs and Illustrations*, p. 692, and like the Counts of the Carlovingian empire (see above, p. 445).

[b] Comitis gladio eum cinxit, &c. (Part II., *Proofs and Illustrations*, p. 397). [He girt him with the sword of an earl.]

[c] See Part II., *Proofs and Illustrations*, p. 328.

[d] See above, p. 386 and Part II., *Proofs and Illustrations*, p. 363.

[e] The Isle of Wight, for instance (Part II., *Proofs and Illustrations*, p. 438).

Part I. Ch. XIX.

which supreme authority was ascribed[a]. If any did not belong to the Anglo-Saxon royal houses, it is most probable that they were the descendants of mediatized British princes, who had retained a subordinate authority beneath the Anglo-Saxon crown.

In these families of vassal dynasties, territorial dignities were hereditary, though not according to an undeviating canon of descent. The crown did not so descend, and the same uncertainty or irregularity subsisted in inferior dignities. As we have often observed[b], the right was vested in the blood; it belonged to kith and kin. The causes which gave to the lord the power of rejecting a thane, unable to perform the duties of his ancestor, would operate with still greater force when the *Læn* was a border country, and the safety of the empire might be endangered by the incompetence of the earl to whom the trust was confided. But a grant which disinherited the old line, and conferred the honour upon a stranger, was against the policy of the commonwealth. The absence of an hereditary claim is especially noticed as a defect of title[c]. The course of descent might be regulated by special compact[d], it might be interrupted by violence, or entirely disregarded by an authority illegally usurped and illegally exercised; yet, whenever a series of earls or ealdormen can be fairly made out, we may discern, amidst all the uncertainties and errors of ancient pedigrees, that hereditary right prevailed: and that, generally speaking, there were few deviations from lineal

See the case of Waltheof (above, pp. 517–519).

Irregularities of descent not incompatible with the preceding position.

[a] The Ealdormen of Lindesey or Lincoln were descended from Winta (Flor. Wigorn., p. 688), the youngest son of Odin. Ethelred, the "Comes Gainorum," was of the royal line of Mercia (Part II., *Proofs and Illustrations*, p. 529). Peada, the Ealdorman of the Middle Angles (id., p. 506), was the son of Penda of Mercia. Athèlstane, the Earl of East Anglia, was descended from a royal family (id., p. 546) probably of Wessex. Oswio was the ancestor of the Earls of Bernicia (id., p. 611). The Subreguli of the "Hwiccas" and of "Hecana" were branches of the House of Mercia (id., pp. 327, 512, 522). When it is recollected that we only possess the most cursory and unsatisfactory notices of these dependent sovereigns, it will appear remarkable that the ancestry of so many of them can be traced.

[b] See above, p. 368.

[c] As in the case of Tostig (Part II., *Proofs and Illustrations*, p. 603, note b), whilst the ancestorial right of Cospatric, in right of his mother, is particularly noticed (id., p. 609).

[d] See above, p. 368.

succession, the ancestor transmitting his authority to his descendant[a].

Some objections, however, may be raised, not destitute of plausibility, and requiring consideration. If we are asked to adduce the strongest case of an hereditary earldom, we must fix upon Northumbria. The earls traced their lineage to the Bretwalda, and the authority was even considered as deducible through a female heir. Yet in this family, the earldom was taken from the elder Waltheof during his lifetime, and bestowed upon his son Uchtred, when the old father was unable to bear the toils of war. Hence, it may be argued, the dignity was merely official, bestowed by royal favour, and recalled by the will or discretion of the sovereign. A comparison with the customs of other Teutonic nations, however, totally destroys the argument, by shewing that the *practice* of amoving an Heretoch, when incapable of performing his duty, was quite compatible with the *principle* of ancestorial right. Waltheof, enfeebled by extreme old age, unable to mount his steed or wield his sword, retires to his castle of Bamburgh, whilst the country is exposed to the ravages of the Scottish enemy. Uchtred acts with the greatest promptitude and decision: he raises the forces of the earldom, and expels the invaders. Ethelred resumes the *Loan*, which the decrepit warrior is unable to defend, and grants it to the son; and the promotion of the heir is exactly the case contemplated by the Bavarian law. The right of the Agilolfing was dependent upon the execution of his trust: and such was the right of the Earl of Northumbria[b].

Objections to the foregoing theory, answers thereto.

The deprivation of the elder Waltheof, on the ground of his being incompetent to military service, not a sufficient ground for denying the right of inheritance, inasmuch as a Duke of the Bavarians (amongst whom the dignity was solely vested in the family of the Agilolfings) might be divested for similar reasons (see above, p. 442).

[a] See, in particular, the succession of the Earls of Chester and Coventry (Part II., *Proofs and Illustrations*, p. 523) and of Northumbria (id., p. 611).

[b] According to the *printed* text of Simeon of Durham (p. 80), these events took place A.D. 969, anterior to the usual date assigned to the accession of Malcolm, which induces Ritson, most unreasonably, to doubt the whole narrative. Supposing there be no error in the date, it is evident that Malcolm may have headed the invasion before his accession to the throne, and that the chronicler designates him by the title which afterwards belonged to him, and according to which he is best known in history. Regnante Rege Anglorum *Ethelredo*, *Malcolmus* Rex *Scottorum*, filius *Kynedi* Regis, congregato totius *Scotiæ* exercitu, provinciam *Northanimbrorum* cædibus et incendiis devastans, *Dunelm'* obsidione circumdedit. Quo tempore *Alduno* episcopatum ibidem regente, *Waltheof*, qui Comes fuerat *Northanimbrorum*, sese in

Part I. Ch. XIX.

That, upon the first creation of a Beneficiary earldom, the dignity may be said to have emanated from the sovereign, is

Bebbanburc incluserat. Fuerat enim nimiæ senectutis, ideoque in hostes nihil virtutis facere poterat. Cujus filio, scilicet *Ucthredo*, magnæ strenuitatis juveni et militiæ aptissimo, filiam suam, nomine *Ecgfridam*, *Aldunus* episcopus dederat uxorem, et has villas de terris ecclesiæ sancti Cuthberti, scilicet, *Bermetun*, *Skirningheim*, *Eltun*, *Carltun*, *Heaclif*, *Heseldene*, cum ea sub illa conditione donavit, ut ejus filiam quamdiu viveret in conjugio cum honore semper servaret. Videns juvenis præfatus terram ab hostibus devastatam, et *Dunelm'* obsidione circumdatam, et contra hoc patrem suum nihil agere, adunato exercitu *Northimbrorum* et *Eboracensium* non parva manu, *Scottorum* multitudinem pene totam interfecit, ipso Rege vix per fugam cum paucis evadente. Interfectorum vero capita elegantiora, crinibus, sicut tunc temporis mos erat, perplexis, fecit *Dunelm'* transportari, eaque à quatuor mulieribus perlota per circuitum murorum in stipitibus præfigi, mulieribus autem quæ ea laverant mercedem dederat vaccas singulis singulas. His auditis, Rex *Ethelredus*, vocato ad se juvene præfato, vivente adhuc patre *Waltheof*, pro merito suæ strenuitatis et bello quod tam viriliter peregerat, dedit ei comitatum patris sui. [During the reign of *Ethelred*, King of the English, *Malcolm*, King of the *Scots*, son of King *Kenneth*, collected an army from the whole of *Scotland*, and laid waste the province of the *Northumbrians* with sword and fire, and besieged *Durham*. At that time *Ealdhun* ruled the see there, and *Waltheof*, who was the Earl of the *Northumbrians*, had shut himself up in *Bamborough*; for he was of great age, and therefore could do nothing vigorous against the enemy. To his son, *Uchtred*, a youth of great bravery and skill in military affairs, Bishop *Ealdhun* had given his daughter, *Ecgfrida*, to wife, and with her he bestowed on him these vills of the Church of St. Cuthbert, to wit, *Barmton*, *Skerningham*, *Elton*, *Carleton*, *Aycliffe*, *Monk-Hesleden*, on this condition that he would always keep his daughter honourably in wedlock as long as he lived. Now when the aforesaid youth saw the land laid waste by the enemy and *Durham* besieged, and that his father could do nothing against this, he summoned the army of the *Northumbrians* and *Yorkshiremen* in large numbers and destroyed almost the whole multitude of the *Scots*, and the King himself with great difficulty escaped in flight with a few followers. But he caused to be brought to *Durham* the best-looking of the heads of the slain with their plaited hair, as was then the custom, and after they had been washed by four women, they were fixed on stakes all round the walls, and to the women who washed them, he gave a cow apiece as a wage. On hearing of

fully admitted[a]: but it does not therefore follow that the sovereign was entitled to withdraw the Benefice, either from the family in general, or from the individual in particular, so long as he continued trusty and true, observing his oath and fulfilling the conditions of his feudal bond. Under the Danes, however, a great change was effected in the constitution of territorial dignities. Those who came in by the sword exercised the prerogatives of conquest; and in a period of revolution and counter-revolution, it is difficult to decide what rights were created or respected by the conflicting parties.

Difficulties arising from the ambiguous application of the term Ealdorman (see II., p. 686).

In the Anglo-Saxon language, the term "ealdorman" is employed to designate any species of superior: a latitude almost as great was given to the term "earl"; and hence arises much ambiguity. There is no inconsistency in supposing that an Anglo-Saxon king might appoint official ealdormen to represent him in the Provinces or Shires of his dominions, with the right of receiving the third part of the revenues of the country; and whose rank, depending, according to the letter of the law, upon the will of the sovereign, would be *de facto* hereditary in the family of the most influential thane of the Shire: so that it would appear as if it passed with any patrimonial *Læn* which the earl or ealdorman happened to hold[b].

this, King *Ethelred* called the young man to him, and while his father *Waltheof* was still alive, he gave him the earldom of his father, as a reward for his bravery and for his valiant deeds in the war.]

[a] "Kings shall appoint Earls and Aldermen, Shire-reeves and Doomsmen," is the declaration said to have been made by Wihtred, in the Council of Baccanceld[1], A.D. 697. (Sax. Chron.) The passage is a recent interpolation; but, supposing it were authentic, the question as to the power of *amotion* would remain undetermined.

[b] Under the Anglo-Normans, the Earldoms (with the exception of Chester) were more in the nature of official Earldoms: and the heir or successor obtained the restitution of his ancestor's office, by a grant, which, *in terms*, was a new creation, though, *in fact*, it was only a restitution. *Henricus* Rex Angliæ, &c. Sciatis me *fecisse Hugonem Bigot* Comitem de *Norfolc*, scilicet de tertio denario de *Nordwic*' et de *Norfolc*'. Et volo et præcipio quod ipse et *hæredes sui* ita liberè et quietè, et honorificè teneant de me, et de meis hæredibus, sicut aliquis Comes Angliæ melius vel liberius Comitatum suum tenet. Et dapiferatum *suum* ei ita liberè et quietè *concedo*, habendum sicut *Rogerus* pater suus melius vel liberius habuit, tempore Regis *Henrici* avi mei, Cart. Ant. S. 13. [*Henry*, King of England, &c. Know

Part I. Ch. XIX.

In the last age of the Anglo-Saxon empire, we may discern the creation of high functionaries, bearing the constitutional name of ealdormen or earls; but who were rather viceroys acting by direct delegation from the sovereign. Ethelred began this practice for the purpose of exalting his favourite, the traitor Eadric Streona; he who afterwards was the main agent in betraying the family of his benefactor, and in expelling them from

Eadric Streona appointed by Ethelred to be *Dux*, Præfectus, or Ealdorman, over the whole kingdom of Mercia. (See II., p. 511.)

ye that I have made *Hugh Bigod* Earl of *Norfolk*, to wit, of the third penny of *Norwich* and of *Norfolk*. And I will and ordain that he and *his heirs* shall hold it of me and my heirs as freely and quietly and honourably as any Earl in England best and most freely holds his Earldom. And I *grant* to *him* his butlery to be held by him as freely and quietly as *Roger* his father best and most freely had it in the time of King *Henry* my grandfather.] *Ricardus* Rex Angliæ, &c. Sciatis nos *fecisse Rogerum Bigot* Comitem de *Norfolc'*, scilicet de tertio denario de *Norwic* et de *Norfolc'*, sicut Comes *Hugo* pater ejus melius unquam fuit, tempore Domini Regis *Henrici* patris nostri. Et volumus et præcipimus quod ipse et hæredes sui ita liberè et quietè et honorificè teneant de nobis et de hæredibus nostris, sicut aliquis Comes Angliæ melius vel liberius et honorabilius Comitatum suum tenet. Sciatis etiam nos reddidisse ei Senescalciam suam et hæredibus suis, ita liberè et quietè, integrè et honorificè habendam, sicut *Rogerus Bigot* avus suus et Comes *Hugo* pater suus melius et liberius vel integrius illam habuerunt tempore Domini Regis *Henrici* avi patris mei, vel tempore patris mei, Cart. Ant. S. 14. [*Richard*, King of England, &c. Know ye that we *have made Roger Bigod* Earl of *Norfolk*, to wit of the third penny of *Norwich* and *Norfolk* as Earl *Hugh* his father ever best had it, in the time of King *Henry* our father. And we will and ordain that he and his heirs shall hold it of us and our heirs as freely and quietly and honourably as any Earl in England best and most freely and most honourably holds his Earldom. Know also that we have restored the Stewartry to him and his heirs, to be held as freely and quietly and completely and honourably as *Roger Bigod* his grandfather and Earl *Hugh* his father best and most freely and most completely had it in the time of King *Henry*, my great-grandfather, or in the time of my father.] The Heir had a full right to the earldom, as well as to the office of steward; but both earldom and stewartry were to be obtained by the grant of the king. Roger, the heir of Earl Hugh, was entitled to ask for his appointment, but it was still to proceed from the king's gift; and if he had been infirm in body or in mind, or notoriously disaffected, the request would have been refused or evaded.

the throne. The earls whom Canute placed in East Anglia, Mercia, and Northumbria, were evidently officers coming within this description. Canute instituted a tetrarchy. Wessex he retained in his power: whilst he appointed a governor, denominated an earl, over each of the other three predominant kingdoms. This form of administration was convenient to a conqueror, compelled to coerce his newly acquired state, and at the same time anxious to conciliate those chieftains who might either disturb him in his acquisitions, or contest his authority.

Canute on his accession divides his dominions into four governments. Wessex he retains in his own hands, whilst he appoints Earls of Mercia, East Anglia and Northumbria, but these functionaries are to be considered as Viceroys, and not as hereditary Princes (see II., p. 415).

Whether the power of Godwin may not have been, in the first instance, founded upon such a viceroyalty, cannot be ascertained. The nephew of Eadric Streona could have no claim upon the earldom of Kent, unless by marriage with some noble lady to whom the inheritance belonged. "Cild" or "Child,"[1] the title given to Wulnoth, Godwin's father, was equivalent to Atheling; and here we are equally unable to discover the grounds upon which it was conceded or assumed. But before the accession of Hardicanute, the dominion of Godwin was evidently converted, either by usurpation or by grant, into a real territorial earldom. The earldoms created for Godwin's sons were of an anomalous description. During a weak, disturbed and factious reign, legal rights were violated with impunity; and the will of the prevailing party often appeared as the voice of the legislature. Yet even then no colourable pretence could exist for dispossessing these dignitaries, unless a forfeiture was incurred, known to the Anglo-Saxon Law, and punishable by the jurisprudence of the Anglo-Saxon Empire.

Earldoms of Godwin and his family. (See II., pp. 436, 530, 561, 562, 603.)

CHAPTER XX.

Anglo-Saxon Feudality—The Scottish subjection—Observations on the temper with which this question has been discussed by the Scottish writers—Uniform course and tenour of the Scottish Homages—Summary thereof—Objections raised by the Scottish writers—Examination of such objections, and answers thereto—Devolution of the rights of the Anglo-Saxon Kings to the descendants of Malcolm Canmore—The Kings of the Scoto-Saxon line considered as the legitimate Heirs to the English Crown—Treaty of Falaise—Construction of such Treaty—Effect of the release granted by Richard I.—Case of the English Kings weakened by the production of legendary evidence and forged charters, and by their extravagant pretensions—Arguments of the Scottish Advocates, destructive of the Feudal Sovereignty which the Scoto-Saxon Kings acquired over the component parts of the "Kingdom of Scotland"—Bearing and tendency of the question.

Part I. Ch. XX.[1]

The question of Scottish subjection, its importance as a portion of the general history of the Anglo-Saxon constitution. Formerly discussed by the Scottish writers with excusable warmth, inasmuch as it might have been so presented as to affect the political interests of the country. Unreasonableness of retaining such feelings in the present age.

In support of the proposition, "that those institutions, "which, when regulated by custom and law, became the feudal "system of dominion, existed amongst the Anglo-Saxons," we must bestow a careful examination upon the case, once argued with so much passion, of Scottish subjection. It is no marvel that the theoretical independence, as well as the practical freedom, of the "Regnum Scotiæ" should have been resolutely maintained against an English king, attempting to impose a new and unwonted yoke upon a country whose inhabitants would scarcely obey their own immediate sovereigns. In more recent times, the Scots were equally justifiable in resisting the doctrine, if, when according to the guarded style employed beyond the Tweed, our good Queen Anne was Sovereign Lady of *Scotland, England, France, and Ireland*, the obsolete rights whilom possessed by Edgar or by Athelstane could be so represented as to deprive the people of any one privilege belonging to their constitutional monarchy. The Scottish parliament acted wisely in

(See above, p. 524.)

passing a vote of thanks (accompanied by a more substantial reward) to the learned writer who had "cleared the independence of the nation." And the conflagration of the "false and scurrilous" essay of the English antiquary, would have a salutary effect in discouraging any further discussion of the "superiority " and direct dominion of the Imperial Crown of England over the " Crown and Dominion of Scotland": at least the topic would be avoided by any prudent person within the reach or grasp of the very useful public functionary who consigned the odious disquisition to the flames[a]. Considering the relative circumstances of the two kingdoms, the vigilance shewn by the Scots of those days to defend every outwork which guarded the institutions of their forefathers, was a praiseworthy manifestation of true patriotism. Even their jealousy to preserve all tokens of ancient power and political self-existence, the arrangement of the Scottish insignia in the most honourable position, the titles marshalled with due attention to Scottish precedency, resulted from sound policy. And though we may be almost inclined to smile at the fervent anxiety thus displayed, to maintain the Unicorn in his station on the *dexter* side of the shield[b], still we may

Scottish Parliament orders Atwood's "Superiority &c. of the Crown of England asserted," to be burnt at the market-cross. Thanks and a reward voted to his opponent, Anderson.

[a] Moved, that *Mr. James Anderson*, Wryter to her Majesty's Signet, having wryte a book intituled "*Ane Historicall Essay shewing that the Croun and Kingdom of Scotland is imperiall and independent*," thereby clearing the independency of this nation, he should have a reward for that good service, and agreed that he shall have for reward the sum of four thousand eight hundred pounds; as also, that the thanks of the Parliament be given him by the Lord Chancellor in presence of her Majesty's High Commissioner and the Estates, which was accordingly done.

Moved, that the book intituled "*The Superiority and Direct Dominion of the Imperial Croun of England over the Croun and Kingdom of Scotland*," being scurrelous and full of falshoods, as also the pamphlet intituled, "*The Scots Patriot unmasked*," reflecting upon the honor and independancy of this nation, both wryte by *William Atwood*, be *brunt by the hand of the hangman*, and accordingly the same was ordered to be done by the Magistrats of Edingburgh, Wedensday nixt, being the fyfteenth instant, betwixt the hours of eleven and twelve, and that a warrand be given to them for that effect.

Both votes passed on the same day, 10th August, 1705 (Thomson's Statutes, vol. xi. p. 221). A reward of 4800*l.* was also voted to Mr. James Hodges, "who hath in his writings served the interests of this nation."

[b] This point occasioned great discussion upon the accession of

Part I. Ch. XX.

be assured that the Rampant Beast was a sentinel who assisted in guarding national liberty. But as all sources of mutual jealousy are now happily removed, it is to be hoped that the North Britons will at last be induced to investigate this portion of their history without prejudice or partiality. Abandoning the commonplaces of "Caledonia unsubdued," &c. will they not consent to claim the meed of praise which really belongs to their country? Let them be justly proud of the progress made by modern Scotland in civilization. Let them extol, as they justly may, the literature, the morals, and the religion of their native land, and they will cease to value the toys for which they contend. They may do so without any disparagement to the good sense of their ancestors. As I said before, there was a time when the matter was worth a contest, but that time has passed away. The Unicorn now stands on the *sinister* side of the shield; and I hope that they will allow Kenneth to take his proper seat in the Witenagemot of the English king with equal tranquillity. Scarcely any argument need be addressed to those, who, uninfluenced by preconceived theory, will bestow an impartial consideration upon the question. It is only necessary that they should examine the evidence which is adduced[a], and upon such evidence their opinion will be formed.

Homages rendered by the Scottish Kings; their uniform course and tenour.

If we contemplate the succession of homages rendered by the Scottish monarchs, and in which their subjects so often concurred,

James I. The Scottish commissioners maintained, that since the Lions of England were only the united *Leopards* of the Duchies of Normandy and Guienne, the Scottish Lion, which, as they asserted, had always been the ensign of a kingdom, was entitled to precedence on all occasions; and James appears, in the first instance, to have been inclined to support this claim. The dispute was ended by a compromise. In the Scottish achievement the Unicorn stands as the *dexter supporter*, the Scottish Lion fills the *dexter quarter*. The jewel of the Thistle is suspended *above* the George; and in the Scottish style (see above, p. 522), Scotland *takes precedence* of England. (Nisbett on Armories.)

[a] See Part II., *Proofs and Illustrations*, pp. 366–372, 374, 375, 381–385, 392, 394, 407, 415–417.

The principal passages are collected in the *Proofs and Illustrations* as last quoted, and I request that the reader will peruse them *before he attends to the arguments* which I have grounded upon such evidence. The objections which I have attempted to answer are principally those of Sir James Dalrymple, Lord Hailes, and Anderson.

beginning with the reign of the first Bretwalda who is commemorated as having subjugated the Scots, we shall find the acts to be of uniform nature. In the more recent periods, the proceedings are recorded with greater care: but, from the first dawn of the Anglo-Saxon empire, down to the appearance of Alexander in the parliament of Edward, and the homage of Balliol, the series is continuous, the transactions are consistent. In no one instance, during this long period, is any voice raised against the dependence, either by king or people: excepting an ambiguous reservation of rights and dignities, faintly breathed by the sovereign, and which may be fully explained without any derogation to the superiority of the English crown.

Connexion of the several acts of homage.

Consider how these acts bear upon one another. Perhaps some of these transactions may have related more particularly to Lothian and Cumbria; but others, many others, are most explicitly applied to the Scots, to the kings of the Scots, and to their kingdom. There was no anxiety manifested by the Scottish kings to draw any distinction between the homager of the Anglo-Saxon Crowns and the ruler of the Gael. And had the sons of Fergus been deprived of the lands south of Forth and Clyde, the name of king would scarcely have protected them in the remnant of their territory—the fragments of the old Pictish kingdom—pressed and menaced by the hostile Scandinavian settlements, and the insubordinate clans of the Gael.

The king of the Scots and *all the Scots* submit to Edward the Elder, and choose him as their lord[a]. No battles are stated to have been waged against them; their submission was voluntary: uncoerced and unconquered, they yield to the pacific dominion of the English king. Constantine, compelled to perform homage to Athelstane, stands upon record as a member of the Anglo-Saxon Witenagemot[b]. He appears like the vassus Tassilo in the general Placitum of the Carlovingian emperor. Malcolm is placed upon the throne by Edward the Confessor. Like Balliol, in the aftertime, he is restored by his Superior; and having subsequently become the man or vassal of the Conqueror, he renews his homage and fealty to Rufus[c]. These repeated renewals of homage upon each change of lord are in strict conformity to those feudal principles which we have before explained[d]. When

Malcolm Canmore, when summoned to appear at the

[a] Part II., *Proofs and Illustrations*, pp. 358 ff.

[b] id., p. 374. [c] id., p. 633.

[d] See above, pp. 436, 437, 506–508, 519, 520, &c. and Part II., *Proofs and Illustrations*, pp. 744, 749, 773–777.

Part I. Ch. XX.

summoned to appear in the court of the English sovereign, Malcolm obeys the mandate. He does not protest that he is discharged from obedience, he only discusses the mode and manner. He appears in the feudal court, and professes his readiness to submit to judgment. True it is, he maintains that such judgment should be given on the border, where the kings of Scotland or of the Scots had been long *accustomed* to do right to the kings of England or of the English; "Ubi Reges Scottorum erant *soliti* rectitudinem facere Regibus Anglorum." We do not know whether Malcolm could have established the peculiar mode of proceeding which he demanded. Possibly his claim may have had some foundation. The tribunal existing on the confines of West Wales, in which the six British and six English "Lawmen" decided the disputes of the conterminous tribes, bears a considerable affinity to the judgment according to border law. The Inquest empanelled from either nation seems to represent the earlier Scabini of the Marches; and such a mode of terminating disputes between the people of the two dominions may have afforded a colourable pretext for the pretensions which Malcolm advanced. A tribunal thus constituted seems, however, more adapted to a discussion of the dissensions of subject and subject[a], than to the relation between vassal and sovereign. Yet, be this as it may, Malcolm, in preferring his plea, grounded his partial immunity upon an established usage which testified the Scottish subjection.

court of Rufus, does not deny his subjection, but claims the right of being judged by border law.

Malcolm acknowledges that the Kings of the Scots were accustomed to *do right* to the Kings of the English, or of England.

Upon the death of Malcolm, the throne is occupied by Donaldbane. Duncan, the son of Malcolm, applies to William Rufus, praying that he would be pleased to restore him to his inheritance, the kingdom of his father. William Rufus grants the request. Duncan takes the oath of fealty[b], and, supported by the English king, he expels the intruder and acquires the crown. Edgar,

[a] See above, p. 388 and Part II., *Proofs and Illustrations*, pp. 330, 446, 447.

[b] See Part II., *Proofs and Illustrations*, p. 640. The Saxon chronicle is also very full and explicit.

...when Duncan, King Malcolm's son, heard all that had taken place, he was then in King William's court, because his father had given him as a hostage to our King's father, and so he lived here afterwards, he came to the King *and did such fealty as he required at his hands*, and so, with his permission, went to Scotland, with all the support that he could get, of English and of French, and deprived his uncle Dufonald of his kingdom, and so was King, Sax. Chron., ed. Ingram, p. 307.

the son of Malcolm, receives the same assistance. He also is deprived of his inheritance by a usurper. He claims the aid of his Superior, and by that aid he is placed upon the throne, though in due subjection to his feudal lord. Alexander, his brother, succeeds by the *grant* of the English king[a]. In subsequent periods the proofs of this dependence become more and more precise. The conditions are better defined. And it is scarcely possible to account for the "surprising fact of the unani- "mous subjection of a proud and brave nation to a foreign con- "queror," unless the submission of the English and Norman barons, and the Saxon and Celtic population, whom we are pleased to include under the general name of Scots, was facilitated by the prevailing opinion, that Edward's claim was warranted by law.

Difficulty of accounting for the unanimous submission of the so-called *Scots* to Edward I. except upon the supposition that they felt the substantial justice of his claim.

Let us now endeavour to sift and weigh the principal objections urged by the advocates on the Scottish side. Omitting all minor cavils, and passing over all points leading to unnecessary disputation, I will proceed to those reasons and arguments upon which most stress can be laid.

Answers to the objections against the dependence of the Scottish monarchs, as urged by Anderson, Dalrymple, Craig, Chalmers, &c.

I. The objection so resolutely brought forward by the Scottish historians or antiquaries, that the instruments bearing testimony of the Scottish subjection are forgeries, has never been raised by any Welsh archæologist, though the Cymri are equally interested in disproving the authenticity of the Anglo-Saxon charters. Their "under-kings" appear in the same rank with the Scottish reguli; and such an argument could only have been adduced by the zealous intrepidity of writers, resolved, at all events, to make out their case and cause. Some of the reasons assigned for distrusting the charters are, in truth, the very testimonies of the authenticity of these documents[b]. The Scottish advocates assume it as a rule, that an Anglo-Saxon charter must be spurious *because* it contains the name of a Scottish regulus or king, and upon this assumption they rely. If, from internal evidence, we cannot pronounce the Glastonbury charter[c1] to be authentic, we must reject every existing Anglo-Saxon charter.

Objection I. That the charters are forgeries.

[a] See Sax. Chron.; feng *Alexander* his brother to tham rice, swa se Cyng *Henri* him geuthe, Ingram, p. 330.

[b] Thus the hellenisms of Edgar's charters in particular, have been most erroneously considered as the marks of forgery. Upon this subject, see above, p. 399, and Part II., *Proofs and Illustrations*, p. 292.

[c] A.D. 971, see Part II., *Proofs and Illustrations*, pp. 395, 396.

Part I. Ch. XX.

Objection II. That the Chroniclers are unworthy of credit.

II. Similar remarks will apply to the doubts thrown upon the chroniclers. Sometimes these unhappy witnesses are at once driven out of court; sometimes their credit is destroyed by innuendo. Ordericus Vitalis relates a circumstance which stands in the way of a modern theorist. The modern replies, that Ordericus was a "blundering ignorant monk." Florilegus[1] and Brompton[2] and John of Wallingford[3], insert the names of the vassals who graced the triumph of Edgar on the Dee. These are the embellishments of the monastic writers, "gradual improvements made upon the tale."[a] Florence of Worcester designates Kenneth as a "subregulus." He is the best of our early annalists. You must, however, reject his authority, because "he lived a hundred years after the event"; besides which, he was an Englishman and a monk, and therefore a suspicious character. The chronicle of Melrose records the homage performed by Malcolm the Maiden. A monk of Melrose is as little to be trusted as if he were an Englishman, for the abbey is only a cell of Rievaulx, on the other side of the Tweed, and the passage has been interpolated by the scribes of the parent monastery. Objections of this nature are perfectly allowable to an advocate who labours to procure the acquittal of his client, but they do not elicit the truth in historical inquiry. If the modern Scottish historian refuses to admit the testimony of a particular chronicle, because the writer lived an hundred years after the event; if he discards the testimony of the English chroniclers, because they are Englishmen; and if he discredits all chroniclers, because they were monks and lived in monasteries, it may be proper to ask him where the materials of Scottish History can be found?

Objection III. That the supposed homages were merely voluntary leagues, &c.

III. A Scottish advocate, compelled to admit the chronicles as competent evidence, then cavils at the terms in which the testimony is given. He maintains, that the transactions may be considered as denoting a "voluntary league of friendship amongst princes," and not as a compulsory service; but it is an old artifice of state, even amongst rude nations, to disguise any onerous or disagreeable condition, by civil and courtly terms; and, after all, the feudal bond in its origin was usually a voluntary engagement, or, at least, a compromise of hostility.

[a] It may be here observed, that in Florilegus (or Matthew of Westminster), who gives the fullest account of the homage, we may find numerous proofs that *his* Saxon Chronicle was fuller than those which we now possess.

IV. The allegations, that the instances in which we find evidence of the subjection are few, and that more frequent proofs of the attendance of the Scottish monarchs at the court of the Basileus ought to be required, are susceptible of an obvious answer. Our history exists only in fragments; the notice of Scottish affairs is incidental; and the distance interposed between the Basileus and his vassal, will fully account for the frequent absence of the Scottish king. The munificence of the English kings provided mansions and hostels for their royal homager: but many a weary day's journey was interposed between the Pictish sea and the palace of Winchester or Westminster. Ethelred or Edward might be reasonably solicited to excuse the non-appearance of a monarch, who, on his return, was in danger of finding his throne occupied by an intruder[a].

Objection IV. That the examples of the homages performed, and of the attendance given, by the Scottish Kings at the Court of the Anglo-Saxon Basileus, are few in number.

V. When the facts are indisputable, the Scottish advocates maintain that the homage was obtained by hostility, the acts of submission extorted by duresse, and ultimately renounced by the English kings. In examining these objections, we must recollect that the repeated acts of "infidelity" on the part of the Scots compelled the Anglo-Saxon or English sovereigns to establish their right by the sword. The last reason of kings is often the only mode of bringing an opponent to reason. Before the establishment of those courts and tribunals which gave a strictly legal character to feudality, a vassal had no other means of enforcing justice from his feudal Superior but by arms; and the feudal Superior would as readily adopt the same course, when he was wronged. In fact, the proceeding in either case resulted from the principle so generally adopted in the middle ages, of allowing a party to take the law into his own hands, when redress could not be otherwise obtained. Without doubt, the ingenuity of the Scots would often suggest a plausible reason for their refusal. Canute may have been told by "Malcolm, Mælbæth, and Jehmarc," that he had usurped the rights of the line of Cerdic, and that an intruder was not entitled to demand their fidelity. His armies convinced them that they were rebels, and afforded an irrefragable argument in favour of the legitimacy of the Dane.

Objection V. That the homages were enforced by hostility, and that the submission of William the Lion to Henry II. was extorted by duresse, and afterwards released by Richard I.

Compulsion by hostility and military execution, the only mode of obtaining justice to which a feudal sovereign, circumstanced like Henry II., could resort.

A Vassal had originally no other means of obtaining justice against his Lord.

These proceedings resulting from the general principle of allowing parties to take the law into their own hands. (See above, pp. 147–151.)

The so-called rebellion of the Scots against Canute perhaps justified by the deficiency of his title as a usurper, which would enable the Scots to maintain that he was not entitled to the homage due to the line of Cerdic (see II., p. 415).

The desire of releasing themselves from their *antrustionship*

[a] The insecurity of the road is particularly assigned as the reason why Kenneth did not repair to Ethelred, for the purpose of obtaining his assent when Cumbria was transferred to Malcolm (Part II., *Proofs and Illustrations*, p. 408).

Part I. Ch. XX.

would be sufficient to excite the Scots to withdraw their ancient and accustomed homage, when the invader who had won the English crown was scarcely settled upon his throne. But in the resistance offered by Malcolm Canmore to the Conqueror and to Rufus, we may trace deeper motives than those which actuated his predecessors. Malcolm was the husband of Margaret, the grand-daughter of Edmund Ironside, who, by the virtual resignation of her brother, Edgar Atheling, became, in popular estimation, the heiress of the Anglo-Saxon crown. I will not say that the rights which the Scot would derive through her were incontestable, so long as Edgar lived; but they would be sufficiently plausible to encourage the ambition of an active and enterprising monarch. Malcolm, by his possession of Lothian, was to be considered an Anglo-Saxon sovereign. "Saxonia"[1] became a place of refuge for the English, the "best men of the land,"[a] who, amongst a people of their own race, could here avoid the Norman tyranny, and, by strengthening the hands of Malcolm, enable him to appear as the deliverer of their brethren. Of the Saxon feelings encouraged by Margaret and Malcolm, we have an unambiguous proof in the Anglo-Saxon appellations which their children assumed: *Edward* bore the name of the Confessor; *Edmund*, of the valiant Ironside, the hero of the English; *Ethelred*, of the immediate stem of the royal family; and *Edgar*, of the Emperor of Britain. The fair *Editha*, afterwards called *Matilda*, may perhaps have been borne to the baptismal font as the god-child of the widowed Saxon queen, whose last days passed away in tranquillity and honour under the protection of the Norman conquerors[b].

Probability that Malcolm Canmore refused to submit to the Conqueror, in consequence of the claims which his wife, Margaret, possessed to the Anglo-Saxon Crown.

Proofs of the Saxon feelings which existed in the Court of Malcolm.

Anglo-Saxon names assumed by the children of Malcolm.

Gaelic appellatives never afterwards used by the Scoto-Saxon Kings.

[a] Sax. Chron.

[b] *Alanus* enim *Rufus Britannorum* Comes, *Mathildem* quæ priùs dicta est *Edith*, in conjugem sibi a Rege *Rufo* requisivit, sed morte præventus non obtinuit. Deinde *Guillelmus de Guarenna*, *Suthregiæ* Comes, *Mathildem* expetiit, sed divinitus reservata celebriùs alteri nupsit. *Henricus* vero, adepto *Anglorum* regno, præfatam virginem desponsavit, ex qua *Guillelmum Adelinum*, et *Mathildem* Imperatricem genuit, Ord. Vital., lib. vii. p. 702. [For *Alan the Red*, Count of *Britanny*, sought *Matilda*, who was formerly called *Edith*, as a wife from King *Rufus*, but being cut off by death, did not obtain her. Then *William of Warenne*, Earl of *Surrey*, sought *Matilda*, but being providentially kept back, she married another. For *Henry*, after he had obtained the kingdom of the *English*, married the afore-

Hitherto, names bestowed upon the sons of Fergus were derived from the primeval founders of the race, hallowed by tradition, and resounding from generation to generation in the Duan[a] of the bard. But the name of "*Malcolm* the son of *Duncan*," was the last which the genealogists of the Scottish sovereigns can repeat in the speech of the Gael; and Edgar, placing his foot upon the fated stone, was presented to the "hosts of the yellow tresses," not as their patriarchal chief, not as the *Cean* of the race, but in the guise of one who appertained to a strange and hostile people. In his personal character, Edgar bore the closest similarity to the Confessor, and the mild virtues which he displayed could only have been encouraged by habits and customs entirely diverse from the opinions and pursuits of his Celtic warriors[b]. Contemning the language of his ancestors, the Scoto-Saxon monarch almost disowned his descent. Turning a deaf ear to the genealogy chanted by the hoary Sennachie, he listened with pride and complacency to the monk, who traced his pedigree to Cerdic and to Woden. Estranged from the race to which he belonged, the Gael became equally alienated from their monarch[c]:

Scoto-Saxon Kings virtually disown their Gaelic descent. The Gael governed by the Low-landers or *Sassenachs*, as a strange people, almost as enemies.

said virgin, of whom he begat *William the Atheling*, and the Empress *Matilda*.]

1118. *Mathildis* Regina quæ in baptismate *Edith* dicta fuit, Kal. Maii obiit, Ord. Vital., lib. xii. p. 843. [A.D. 1118, Queen *Matilda*, who was called *Edith* at her baptism, died on the 1st May.]

[a] The "Albanic Duan" (see above, p. 324), contains a deduction of the pedigree of the Scottish monarchs, from Fergus to

> Malcolm who is King,
> The son of Donachaidh,
> And how long he will reign no one knows,
> But the Knower of all knowledge.

These lines fix the date of the composition, the earliest authentic monument of the history of the British Gael.

[b] *Edgarus* homo erat dulcis et amabilis, cognato suo Regi *Edwardo* per omnia similis, Ethelredus Rievallensis, de Genealogia Regum, p. 367. [*Edgar* was a sweet and amiable man, in everything like his kinsman, King *Edward*.]

[c] And hence, upon the death of the anglicised Malcolm, the Scots placed Donald his brother upon the throne, and expelled the English retainers of the Crown; Omnes *Anglos* qui de curia Regis extiterunt de *Scotia* expulerunt (II., p. 640). [They drove out of *Scotland*, all the *English* who were members of the King's court.] The Saxon Chronicle

Part I. Ch. XX.

and, in their own country, the *Scots* became the objects of the fear, the persecution, and even the enmity of their sovereign, who had transferred all his affections to the Saxon population of his realm.

Edgar, the Vassal of William Rufus, and restored to the Crown of the Scots by the aid of his Superior, unable to assert his rights as representative of the line of Cerdic: but his assumption of the title of "Basileus," probably indicated his claim.

Edgar, the son of Malcolm, the vassal of Rufus, could scarcely dispute the legality of the authority by which he had been appointed: and Edgar Atheling, seeking not power for himself, would avoid encouraging his kinsman in any attempt to regain the English throne. Yet Edgar's remarkable assumption of the imperial title[a], never adopted by any antecedent or subsequent Scottish king, may be deemed an indication that he asserted his pretensions to the prerogatives of his illustrious namesake and ancestor, though in such a mode as might escape the notice of his liege lord.

1137, 1138. Attempts made by the English to call in the Scoto-Saxon Kings against the Normans.

But the claim was not forgotten. The English yearned for the "right royal line." Conspiring against their Norman masters, they sought to place themselves beneath the dominion of a sovereign who seemed to be the truest representative of the ancient dynasty. David, an Englishman by education and feeling, and married to the daughter of Waltheof, Earl of Northumberland, whom the English considered as a martyr to the national cause, was invited by the "factious," in order that he might expel the Normans and ascend the throne. Immediately after this overture

says, that they drove out *all the English* who had been with Malcolm; and ealle þa Englisce ut adræfdon, þe ær mid þam cynge Melcolme wæron. [And they drove out all the English who were formerly with King Malcolm.] Lord Hailes whimsically calls this "a *savage* and *inhospitable* measure!" The Scots only submitted to Duncan upon condition that he should not allow any English or Normans to settle in their country, ...illum regnare permiserunt, *ea ratione*, ut amplius in *Scotiam* nec *Anglos* nec *Normannos* introduceret, Sim. Dunelm. *ut supra*. [They permitted him to reign *on this condition* that he would never introduce into *Scotland* either *English* or *Normans*.] The best praise which Malmesbury can bestow upon David was, that he had quite ceased to be a Scot; Juvenis cæteris curialior, et qui *nostrorum* convictu et familiaritate limatus à puero, omnem rubiginem *Scotticæ* barbariei deterserat, Will. Malm., lib. v. p. 89. [A youth more courtly than the others, and who, being from boyhood polished by intercourse and familiarity with *us*, rubbed off all the rust of his *Scottish* barbarity.]

[a] Upon his great seal (see Anderson's Diplomata) he is styled "*Eadgarus Scottorum* Basileus." [*Edgar*, Basileus of the *Scots*.]

we find that he invaded England, seeking to "win the country"; and the ancient banner of Wessex, the Golden Dragon, cast down for so many ages, now waved amidst the host of the Scoto-Saxon King[a].

David assumes the Dragon of Wessex as his standard.

David had certainly sworn to maintain the cause of his niece; but are we certain, that, if he had succeeded in regaining the inheritance to which he was invited by the people, he would have resigned his dominion in favour of the Empress, or that the English would ultimately have allowed a woman to retain the crown?

The Scottish Kings considered by English Chroniclers as the legitimate heirs of the Anglo-Saxon rights.

The opinion that the Scottish kings were the legitimate representatives of the Anglo-Saxon dynasty continued to prevail. It was recorded from age to age in the volumes of the monastic chroniclers. Shall we be told again that they were ignorant monks? But one writer addresses his work to William the Lion, to the sovereign whose right and title he proclaims, and to the members of the royal family: another is an historian who on all

[a] 1138. In this year came *David*, King of Scotland, with an immense army to this land, and would fain win this land—wolde winnan þis land, Sax. Chron. Ordericus Vitalis (p. 912) relates the conspiracy which preceded this expedition; quidam pestiferi conspirationem fecerant, et clandestinis machinationibus sese ad nefas invicem animaverant, ut constituto die, *Normannos* omnes occiderent, et Regni principatum *Scottis* traderent [certain baleful men made a conspiracy, and by secret plots mutually encouraged one another to crime, to kill all the *Normans* on an appointed day and deliver the Kingdom to the *Scots*]. He afterwards (p. 917) assigns this invitation as one of the probable causes of David's invasion; propter fraudulentam invitationem factiosorum, a quibus ad patriæ detrimentum lacessitus fuerat, seu propter jusjurandum, quod jubente *Henrico* Rege jam nepti suæ fecerat [on account of a deceitful invitation from the factious, by whom he had been stirred up to the damage of this country, or else on account of the oath, which at the bidding of King *Henry*, he had sworn to his niece].

The Golden Dragon of Wessex is described by Huntingdon (see Part II., *Proofs and Illustrations*, p. 338) in a passage which, like many others in that valuable writer, must be considered as a version of an ancient war-song. For its employment as the national ensign of the Scots, see Ethelredus Rievallensis, de Bello Standardi, p. 346. The Dragon was not portrayed upon a banner, but the vane or ensign was made in the figure of a serpent, "vexillum ad similitudinem draconis figuratum." [A banner in the shape of a dragon.]

Part I. Ch. XX.

occasions echoes the popular voice, and flatters the passions of the multitude: a third is the compiler of a series of annals, which were found in every library: a fourth collects, to the best of his endeavours, the materials for the constitutional history of England[a]. Whatever doubts may be raised, these authorities establish the point upon which the political importance of the claim advanced by any King *de jure* depends; it is entertained by the *Pretender*, and recognized by popular opinion.

When William of Scotland fell into the power of the king of

[a] Joscelin, the monk of Furness, in his Life of St. Waltheof (p. 248), dedicated to "*Willielmus* Rex *Scotiæ*," Alexander his son, and the Earl David, affords the most important of these testimonies; Genitor ipsæ beatæ *Margaritæ* dictus *Edwardus*, nepos et hæres legitimus sanctissimi *Edwardi* Regis, jure hæreditario *Anglici* Regni per lineas rectas successivæ generationis in vos devoluto, *vos sceptrigeros effecisset nisi Normannorum* violenta direptio, Deo permittente, usque ad *tempus præfinitum* præpedîsset. (See also Scotichronicon, vol. i. p. 218, where the passage is inserted.) [The said *Edward*, the father of Saint *Margaret* herself, the nephew and lawful heir of the most holy King *Edward*, *would have made you sceptred kings*, as the hereditary right to the realm of *England* had devolved on you in the direct line of succession, *if* the violent pillage of the *Normans* had not, with God's permission, hindered you till the *appointed time*.] The positive assertion of the right, and the clear expectation of the restoration of the legitimate line, render the passage very remarkable. Matthew Paris makes nearly the same assertion; Nati sunt denique Reginæ *Margaritæ* sex filii et duæ filiæ, quorum tres, *Edgarus* scilicet, *Alexander* et *David*, juxta generis sui nobilitatem, Reges fuerunt, ex quibus Regum *Angliæ* nobilitas, a propriis per *Normannos* expulsa finibus, ad Reges devoluta est *Scottorum*. [Finally, there were born to Queen *Margaret* six sons and two daughters, of whom three, to wit, *Edgar*, *Alexander* and *David* became Kings, as was consonant with their noble lineage, and from them the royal descent of the Kings of England, expelled from their own lands by the Normans, descended to the Kings of the *Scots*.] The same passage is found in Florilegus, p. 226. In the Constitutional Collection of the Anglo-Saxon Laws (MS. Cott. Claudius D ii, f. 42; see p. 497), it is stated that Alexander asserted his right; *Alexander* vendicavit sibi jure hæreditario coronam et monarchiam totius regni prædicti sicut verus hæres et justus de jure boni Regis *Edwardi* ultimi. [*Alexander* claimed for himself, by hereditary right, the crown and rule of the whole realm aforesaid, as the true and rightful heir of the good King the last *Edward*.]

England, it would have been expedient, under any circumstances, for the latter to use all lawful means by which he could ensure the obedience of a vassal who had so often defied his liege lord. William had followed the king of England in his wars[a]; he solemnly renewed his engagements of fealty and allegiance to Henry's appointed heir. Like the humblest freeholder of England, William performed homage to the future king, without any reluctance or reservation[b]. And the memorable treaty of Falaise contained no stipulation whatever, which, considering the state of public affairs, can be represented as imposing harder terms than were demanded by the relations existing between a contumacious vassal and a victorious suzerain. He was to renew his fealty and homage for all his "tenements" in general, and more especially for Scotland and for Galloway. All felons taking refuge in the dominions of William were to be delivered up for trial in the court of the English king: but Scottish criminals were to be surrendered in like manner to William's tribunal. Hostages were to be given; and the prelates, earls and barons of Scotland being required to perform homage to Henry, were also to enter into an additional engagement that they would aid the king of England, the Superior, against their immediate sovereign, in case he violated his fealty[c]. Lastly, the strongholds of Berwick, Jedworth, Stirling, Roxburgh, and the "castle of Maidens,"[1] were to be surrendered into the power of Henry, and retained as securities for the due performance of the convention and treaty thus entered into by the Scottish king. Hard conditions, but not unreasonable, when imposed upon a vassal, who, confederating with the enemies of his liege lord, had recently ravaged England, committing every excess of licentious barbarity.

Stipulations imposed upon William the Lion, by the treaty of Falaise, not unfair or unjust, nor inconsistent with the previous claims of the Anglo-Saxon or English Crown (see II., p. 649).

Prelates, Earls, Barons, &c. of Scotland, the subjects of William, perform homage to Hen. II. his Superior. Compare with the homages of the Bavarians, and their proceedings against Tassilo when he had committed treason against Charlemagne (see II., p. 769).

But is it not probable, that, in this renewal of homage and in the accompanying stipulations, more was meant than is publicly disclosed? William and his family cherished the remembrance

[a] As far as I can ascertain, he was the first king so called; Rex *Scottorum* was the style of all his predecessors. It is probable, for the reasons before stated, that the name of Scotland was first given by the English to the country beyond the Tweed, but the effect of the introduction of the name would be the same.

[b] Part II., *Proofs and Illustrations*, p. 648.

[c] The Bavarians considered themselves as bound to accuse Tassilo of his treasons against Charlemagne (Part II., *Proofs and Illustrations*, p. 769).

Part I. Ch. XX.

of their lineage; and, as we have just seen, the most grateful mode of approaching these descendants of Cerdic, was, by reminding them of their legitimate claim to the English throne, now occupied by the Norman intruder. This adverse claim could scarcely have escaped the vigilance of the wise and politic Henry. It is true that he did not, in express terms, deduce his right to the English throne from the Anglo-Saxon kings; but he was supported by the general belief, that in him the ancient dynasty was restored: the English traced his ancestry to Edgar and to Alfred, and to Cerdic and to Woden[a]. The Conqueror is not

Title of the Scottish Kings preferable to that which Henry II. could deduce through Maud, the daughter of Margaret, inasmuch as the Scottish Kings would take precedence as male heirs.

[a] Ralph de Diceto has preserved one of these genealogies. Whilst the genealogy of the King from the Saxon stock is traced so carefully, there is no notice whatever of his Norman ancestry.

Hic est *Henricus* secundus Rex *Anglorum*, cujus mater *Matildis* Imperatrix, cujus mater *Matildis* Regina *Anglorum*, cujus mater *Margarita* Regina *Scotorum*, cujus pater *Edwardus*, cujus pater *Edmundus ferreum latus*, cujus pater *Ædelred*, cujus pater *Edgarus* Pacificus, cujus pater *Edmundus*, cujus pater *Edwardus* Senior, cujus pater nobilis *Aluredus*, qui fuit filius *Edwlfi* Regis, qui fuit filius Regis *Egbrithi*, cujus pater *Alcmundus*, cujus pater *Effa*, cujus pater *Eppa*, cujus pater *Ingles*, cujus frater fuit famosissimus Rex *Ine* nomine, quorum pater *Keonred*, qui fuit filius *Ceowald*, qui fuit *Cutha*, qui fuit *Cuthwin*, qui fuit *Cheluin*, qui fuit *Chenric*, qui fuit *Creoda*, qui fuit *Ceordic*, qui fuit *Elesa*, qui fuit *Esla*, qui fuit *Guuis*. Iste fuit capud gentis suæ à quo et tota illa gens nomen accepit. Hujus pater fuit *Wig*, cujus pater fuit *Frewine*, cujus pater *Freddegar*, cujus pater *Brand*, cujus pater *Bealdœg*, cujus pater *Woden*, R. de Diceto, Imagines Historiarum, 529. [He is *Henry* the Second, King of the *English*, whose mother was the Empress *Matilda*, whose mother was *Matilda*, Queen of the *English*, whose mother was *Margaret*, Queen of the *Scots*, whose father was *Edward*, whose father was *Edmund Ironside*, whose father was *Ethelred*, whose father was *Edgar* the Peacemaker, whose father was *Edmund*, whose father was *Edward* the Elder, whose father was the noble *Alfred*, who was the son of King *Ethelwulf*, who was the son of King *Egbert*, whose father was *Alcmund*, whose father was *Effa*, whose father was *Eppa*, whose father was *Ingles*, whose brother was the most famous King, *Ine*, of whom *Kenred* was father, who was the son of *Ceowald*, who was the son of *Cutha*, who was the son of *Cuthwin*, who was the son of *Cheluin*, who was the son of *Chenric*, who was the son of *Creoda*, who was the son of *Ceordic*, who was the son of *Elesa*, who was the son of *Esla*, who was the son of *Guuis*. He was the head of that race, and from him also the whole of that

even named in Henry's pedigree. His subjects endeavoured to forget that Henry had any Norman progenitors; and, though he did not derive his crown from the popular voice or popular suffrage, his authority was supported by popular feeling. But if the son of Geoffrey Plantagenet had any right to the sovereignty of England by reason of his English blood, the Scottish king had a better. The recollection of "good Queen Maud" might be endeared to the nation by her virtues and her ancestry. An *Atheling* of her race would be regarded with more affection than a Norman damoiseau[a]. Still, she could not be called the heiress of Edmund Ironside, so long as the descendants of her brothers existed: for, whatever irregularities may have prevailed in the course of descent, the brothers of Edith would be preferred to a female heir.

Under these circumstances, every homage performed by a Scottish king was a virtual acknowledgment of the title of the *Lord by disseisin*, and therefore most important to the intruder. The reservation in the previous homage of Malcolm IV., "salvis dignitatibus suis," was probably inserted to guard against the effects of the submission. Henry, by the renewal of the homage pursuant to the treaty, and without any reservation, obtained a permanent and authentic record of an act which could not be explained away. And at the same time he protected his territories by the garrisons, which entirely bridled the power of the rival family.

1189. Ric. I. or Cœur de Lion, releases to William the Lion all conventions and agreements arising out of the treaty of Falaise, a transaction which has been erroneously represented as a renunciation of his superiority.

The successor of Henry II., the selfish and cruel Richard, whose character, in consequence of an epithet misapplied and misunderstood, has been invested with a false and delusive halo of chivalrous valour, allowed the treaty of Falaise to be cancelled: or, as we are told, "he *invited* William to his court at Canterbury, and *generously* restored Scotland to its *independence*."[b] But the *invitation* was one which could not be easily refused. The Archbishop of York was despatched for the purpose of summoning William to appear; and though the King of Scots was received with due honour, yet his journey was that of a vassal attending

race took its name. His father was *Wig*, whose father was *Frewine*, whose father was *Freddegar*, whose father was *Brand*, whose father was *Bealdæg*, whose father was *Woden*.]

[a] William, her eldest son, always took the Anglo-Saxon title of *Atheling*.

[b] Lord Hailes, vol. i. p. 155.

Part I. Ch. XX.

at the bidding of his liege lord, according to the usage of his predecessors[a].

Tenour of the charter of release purchased by William by the fine of 10,000 marks.

Homage being performed for the dominions of the King of Scots in England, or Lothian, he agrees to pay the sum of ten thousand marks of silver; and in consideration of this payment, Richard yields two of the castles, agrees to abandon any encroachments upon the Marches, grants to William an acquittance of all conventions and agreements to which Henry had "constrained him by new charters, and by means of his captivity"; and all deeds and charters relating thereto were to be delivered up and cancelled. Richard, furthermore, releases all the homages which he had obtained from the immediate subjects of the Scottish King. But to this release of the new "conventions and agreements" is annexed the most important proviso, that William shall completely and fully perform *whatever his brother Malcolm had performed, or ought of right to have performed, to the King's predecessors.*

Effect of Richard's so-called restoration of *Scottish independence.* He gives up the occupation of fortresses which it would have been inconvenient to retain; returns obligations which it might have been difficult to enforce; but inserts clauses by which all the ancient rights of the English Crown are reserved, so that the question of subjection remained as open as before.

The so-called "restitution of independence," therefore, resolves itself into the narrowest possible compass. In consideration of a very large sum of money, Richard, about to depart for the Holy Land, gives up the occupation of certain fortresses which it might have been burdensome or difficult for him to garrison and retain. He releases an obligation imposed upon the subjects of the King of Scotland, which he might never be able to enforce, he delivers up certain parchments relating to the covenants, which he has discharged, and having done all this, he reserves to himself every right whereunto, if he be King of England, he is entitled by law. Had Richard, in the most express terms,

[a] 1289. Eodem anno, mense *Novembris*, *Gaufridus*, *Eboracensis* Electus, per mandatum Regis *Ricardi* fratris sui, ivit contra *Willelmum*, Regem *Scotiæ*, usque ad aquam de *Thewdam*, cum Comitibus et Baronibus *Eboracensis-syræ*; et ibi recepit eum in conductum, et perduxit in *Angliam* usque ad *Cantuariam* ad Regem, administrans ei necessaria, secundum consuetudinem prædecessorum suorum, Benedictus Abbas, p. 575. [A.D. 1289. In the same year, in the month of *November*, *Geoffrey*, the Bishop elect of *York*, by the order of King *Richard* his brother, went to meet *William*, King of *Scotland*, as far as the river *Tweed*, with the Earls and Barons of *Yorkshire*; and there he received him in safe-conduct, and brought him into *England* as far as *Canterbury* to the King, providing for him all things necessary, according to the custom of his predecessors.]

renounced his ancient superiority over Scotland[a], the renunciation would only have been a testimony of his necessities or his imprudence; but it would have been a proof, at the same time, that he

[a] This has been repeatedly asserted, and first by the chronicler Knighton. But no such renunciation can be found in the original instrument. The following are the most material clauses:—

Sciatis nos karissimo consanguineo nostro *Willelmo*, eadem gratiâ Regi *Scotiæ*, reddidisse castella sua *Rokeborc* et *Berwyk* tanquam ejus propria jure hæreditario, ab eo et hæredibus ejus in perpetuum possidenda.

Præterea quietavimus ei omnes pactiones quas bonus pater noster *Henricus* Rex *Angliæ*, per novas cartas et per captionem suam extorsit; *ita videlicet, ut nobis faciat integrè et plenariè quicquid Rex Scotiæ Malcolmus, frater ejus, antecessoribus nostris de jure fecit et de jure facere debuit; et nos ei faciamus quicquid antecessores nostri prædicto Malcolmo de jure fecerunt et facere debuerunt; scilicet et de conductu in veniendo ad curiam, et in morando in curiâ, et in redeundo a curiâ, et in procurationibus, et in omnibus libertatibus, et dignitatibus, et honoribus eidem jure debitis*, secundum quod recognoscetur à quatuor Proceribus nostris ab ipso *W.* Rege electis, et à quatuor Proceribus illius à nobis electis.

Si autem marchias Regni *Scotiæ* aliquis nostrorum hominum, postquam prædictus Rex *W.* à patre nostro captus fuit, injustè usurpaverit, volumus ut integrè restituantur, et ad eum statum reducantur quo erant ante ejus captionem....

Reddidimus etiam ei ligeancias hominum suorum, quas pater noster receperat, et omnes cartas quas pater noster de illo habuit per captionem suam; et si quæ fortè per oblivionem retentæ vel inventæ fuerint, eas penitus carere viribus præcipimus; sæpedictus vero *W.* Rex, ligius homo noster devenit de omnibus terris de quibus antecessores sui antecessorum nostrorum ligii homines fuerunt: et nobis atque hæredibus nostris fidelitatem juravit, Fœdera, vol. i. p. 50.

[Know ye that to our beloved kinsman, *William*, by the same grace of God, King of *Scotland*, we have restored his castles of *Roxburgh*, and *Berwick*, as his by right of inheritance, to be possessed by him and his heirs for ever.

Moreover, we have released to him all the compacts, which our good father, *Henry*, King of *England*, extorted from him by his new charters and by his capture of him: *provided of course, that he do to us completely and fully, whatever his brother, Malcolm, King of Scotland, of right did and was bound by right to do to our ancestors: and that we do to him whatever our ancestors of right did and were bound to do to*

Part I. Ch. XX.

had as good a right to the Superiority as to the castles and earldoms which he alienated from the crown. If he had no right to hold, he had no right to surrender.

Legends and fables adduced by Edward I. (and also by the English Chroniclers) to support the Anglo-Saxon claims. The Scots rebut fables by fables.

We shall lose nothing in our argument, by freely confessing, that the English monarchs, or their agents or ministers, have given a suspicious appearance to the Anglo-Saxon rights, by the legendary fables and apocryphal narratives, which they mingled with authentic history. But the Scots did the same; and, without disputing that Locrine[1], the first settler of Lloegria or England, was the eldest son of Brute, and Albanact and Camber his juniors, they depended upon the pre-eminence possessed by the Egyptian Princess Scota[2], from whom they deduced their race and name. Leaving to Edward the full benefit of the conquest of Scotland by Arthur, they recalled to his memory, that when the British monarch was slain by Modred, Scotland recovered her pristine liberty. Dunwallo, the Briton, may have defeated Staterus, King of the Scots, but the effect of his success was more than counterbalanced by the victories of Gregory the Great, the son of Dungal[3], who subdued all England[a].

the aforesaid Malcolm: to wit, both in his journey to our court, and in his sojourn there, and in his return thence, and in procurations and in all liberties and dignities and honours due to him by right; according as it will be ascertained by the four nobles of our realm who were chosen by the said King *William*, and the four nobles of his realm who were chosen by us.

But if any of our men has unjustly taken possession of the Marches of the Kingdom of *Scotland*, after the time when the aforesaid *William* was captured by our father, we will that they be completely restored, and reinstated as they were before his capture....

We have also restored to him the allegiance of his own men, which was accepted by our father, and all the charters which our father obtained from him by reason of his capture; and if, perchance, any of them be retained by forgetfulness, or be afterwards found, we will that they shall be entirely invalid: but the oft-mentioned King *William* has become our liege man for all the lands for which his ancestors became the liege men of our ancestors, and has sworn fealty to us and our heirs.]

The charter granted to William by Richard, and securing his allowances when summoned to attend the English court in pursuance of the King's writ or command (Part II., *Proofs and Illustrations*, p. 656), was evidently executed in pursuance of this treaty.

[a] See the letter addressed to the Pope by the Barons of Scotland. (Scotichronicon, p. 11.)

Some of the charters produced, in later periods, as evidences of the rights of the English crown, are unquestionably falsified or spurious. If famous John Harding[1] be tried before a jury of antiquaries, for feloniously counterfeiting the great seals of David II., Robert I., and Robert II., and affixing such counterfeits to the letters patent which he forged, a verdict of guilty will infallibly be returned: and when the pension of twenty pounds per annum was granted to him by government as a reward for his discoveries, we may be assured, that the Lord High Treasurer, the Earl of Shrewsbury, did not cause the instruments to be subjected to a very critical examination[a]. Other

Charters forged by the English as evidences of the Scottish homages, but which charters, by displaying the ignorance of the individuals who attempted to counterfeit ancient charters, afford, by comparison, the best proof of the authenticity of such documents as are genuine.

[a] Harding pretended that James I. had offered him the sum of one thousand marks sterling for certain charters, testifying the homages of the Scottish kings. His life had been exposed to the greatest peril in obtaining these documents; nor did he escape without sustaining an incurable hurt or maim. In consideration of his sufferings and his fidelity, an annuity of twenty pounds was granted to him, payable out of the issues of the county of Lincoln, by Letters Patent tested at Westminster, 28th Nov. 36 Hen. VI. (Anderson's App. no. 7.) The records of the Exchequer contain a memorandum of the delivery of the charters to the Earl of Shrewsbury. The following Charters were probably counterfeited about the same period. Even if the phraseology did not at once betray the imposture, the armorial bearings and *Gothic* ornaments of the seals would be sufficient to prove the forgery.

Malcolmus, Dei gratia Rex *Scotorum* et insularum adjacentium, omnibus Christianis ad quos presentes literæ pervenerint, salutem, tam *Danis* et *Anglis* quam *Scotis*. Sciatis nos et *Edwardum* primogenitum filium nostrum et heredem, Comitem de *Carrick* et de *Rotsaye*, recognovisse *nos tenere totum regnum nostrum Scotiæ et insulas adjacentes de excellentissimo domino nostro domino Edwardo, filio Ethelredi nuper Regis Anglie, superiore domino Regni Scotie et insularum adjacentium per homagium ligium et fidelitatem*, prout antecessores et progenitores nostri pro antea temporibus retroactis satis notabiliter recognoverunt et fecerunt, prout per antiquiora recorda coronæ satis nobis constat. Quare ex jure directo nos devenimus *homines vestros*, O Domine noster serenissime *Edwarde* fili *Ethelredi*, Rex *Angliæ* et *Superior Dominus Scotie* et insularum adjacentium, durante vita nostra contra omnes homines vobiscum vivere et mori tanquam *ligii subditi vestri* fideles; et ligiam fidelitatem vobis et heredibus vestris portabimus, sic Deus nos adjuvet et sanctum Dei judicium. In cujus rei testimonium presentibus sigillum nostrum apponi fecimus pro nobis et filio nostro predicto apud *Eboracum* quinto die Junii anno regni nostri nono, in

Part I. Ch. XX.

fictitious documents of the same class, and which may have been manufactured about the same period, are extant. But, fortunately for the cause of truth, these productions afford a sure test

parliamento predicti domini superioris nostri ibidem tento. Ex consensu et consilio *Margaretæ* consortis nostræ, filiæ *Edwardi* filii *Edmundi* ferrei lateris, *Edgari* Atheling, fratris ejusdem consortis nostræ, et quam plurium magnatum aliorum regni nostri predicti, Anderson, App. no. 1. [*Malcolm*, by the grace of God King of the *Scots* and of the neighbouring islands, to all Christian people, *Danes*, *English*, and *Scots*, to whom these presents shall come, greeting. Know ye that we, and *Edward* our firstborn son and heir, Earl of *Carrick* and *Rothesay*, have acknowledged *that we hold by liege homage and fealty the whole of our kingdom of Scotland and the neighbouring islands of our most excellent Lord, Edward, son of Ethelred, lately King of England, the superior lord of the Kingdom of Scotland and the neighbouring islands*, even as our ancestors and progenitors in times past by common knowledge admitted and did, as has been satisfactorily proved to us by the more ancient records of the Crown. Wherefore, of simple right, we have become *your men*, our most serene Lord, *Edward*, son of *Ethelred*, King of *England*, and *Superior Lord of Scotland* and the neighbouring islands, while life lasts, to live and die with you against all men as *your* faithful *liege subjects*: and we will bear liege fealty to you and your heirs, so help us God and the holy judgment of God. In witness whereof we have caused our seal to be affixed to these presents on behalf of ourself and our aforesaid son at *York* on the 5th day of June in the ninth year of our reign, in the parliament of our aforesaid superior lord there held, with the consent and advice of *Margaret* our consort, the daughter of *Edward* son of *Edmund* Ironside, and of *Edgar*, the Atheling, the brother of our said consort, and of very many other magnates of our kingdom aforesaid.]

Edgarus, Dei gratia Rex *Scotorum*, omnibus ad quos presentes literæ pervenerint tam *Francis* et *Anglis* quam *Scotis*, salutem. Sciatis nos, *ex licentiâ Willelmi, Regis Angliæ, Superioris Domini regni Scotiæ*, pro animabus *Malcolmi* patris nostri et *Margaretæ* matris nostræ ac pro animabus *Edwardi* et *Duncani* fratrum nostrorum necnon pro salute nostra, dedisse et concessisse Deo et Sancto Cuthberto confessori, *Willelmo Episcopo*, *Drugeto* Priori et Monachis *Dunelmiæ* Deo servientibus imperpetuum Baroniam et Manerium de *Coldyngham* cum hiis mansionibus subscriptis, scilicet *Berwic*, &c....cum omnibus pertinentiis, juribus, et decimis garbarum et feni cum omnibus libertatibus, franchesiis et regalibus, adeo libere et plenarie sicut prædictus pater noster et dominus illa tenuit: habenda et tenenda omnia et singula prædicta

of the authenticity of the charters of Edgar. The fabrication can be discerned in every line; and had the ingenious clerks, who

Baroniam et Manerium, mansiones, decimas cum omnibus libertatibus, franchesiis, regalibus et juribus quibuscunque, predictis *Episcopo, Priori* et monachis ac eorum successoribus de nobis et heredibus nostris in puram et perpetuam elemosinam imperpetuum. Et nos et heredes nostri omnia et singula prædicta Baroniam, Manerium, mansiones, decimas cum omnibus libertatibus, franchesiis, regalibus et juribus quibuscunque ut predictum est, prefatis *Episcopo, Priori* et monachis et eorum successoribus contra omnes gentes protegemus in perpetuum et defendemus. In cujus rei testimonium presentibus literis nostris sigillum nostrum apponi fecimus apud *Norham in presentia predicti Regis Willelmi Angliæ, superioris domini Regni Scotiæ, et predictorum Episcopi et Prioris Walteri Valeins, Odnelli Umfravile, Rachonis de Loreyns, Odneli Heron, Roberti de Amundivilla* et maximæ multitudinis *Francorum, Anglorum* et *Scotorum*, Anderson, App. no. 3. [*Edgar* by the grace of God, King of the *Scots*, to all to whom these presents shall come, as well *French* and *English* as *Scots*, greeting. Know ye that, *with the license of William, King of England*, the *Superior Lord of the kingdom of Scotland*, for the souls of *Malcolm*, our father, and *Margaret*, our mother, and for the souls of *Edward* and *Duncan*, our brothers, and also for our own salvation, we have given and granted to God and St. Cuthbert the Confessor, and to *William the Bishop, Turgot* the Prior, and the Monks who serve God at *Durham* for ever, the Barony and Manor of *Coldingham* with the underwritten dwellings, to wit, *Berwick*, &c., with all their appurtenances and rights, and the tithes of corn and hay, with all liberties, franchises and royalties, as freely and completely as our said father and lord held them; to have and to hold all and singular the aforesaid Barony and Manor, dwellings and tithes, with all their liberties, franchises and royalties and rights whatsoever, to the aforesaid *Bishop, Prior* and monks and their successors of us and our heirs in pure and perpetual alms for ever. And we and our heirs will protect and defend for ever for the aforesaid *Bishop, Prior* and monks and their successors against all men, all and singular the aforesaid Barony, Manor, dwellings and tithes with all their liberties, franchises, royalties and rights as is aforesaid. In witness whereof we have caused our seal to be affixed to these presents at *Norham in the presence of the aforesaid William, King of England and superior lord of the Kingdom of Scotland, and of the aforesaid Bishop and Prior, of Walter Valence, Odinel Umfravile, Racho de Loreyns, Odinel Heron, Robert de Amundeville*, and a very great multitude of *French, English* and *Scots*.]

Part I. Ch. XX.

bestow the heraldry of the fourteenth century upon Malcolm, endeavoured to indite an Anglo-Saxon *Landboc*, their ignorance would, in like manner, have rendered them liable to instant detection. Without doubt, the exposure of this deceit was amongst the considerations for which the learned collector of the "Diplomata Scotiæ" received his well-earned parliamentary reward. But it is a curious proof of the effect of party prejudice, that, when treating on the Regiam Majestatem, in the very same work, Anderson's acuteness wholly forsakes him; and he ascribes the law-book to the reign of David, though the tokens which stamp it as spurious, are not a whit less palpable, than those appearing in the inventions of the mendacious poet and chronicler.

(See above, p. 523.)

Homages and acts of submission of the Scots, to be construed according to the contemporary practice, and not according to doctrines subsequently introduced.

Lastly, we must acknowledge that the evidences, taken separately, do not go to the full length of establishing the assertion advanced by Edward, that the kings of England, or the Anglo-Saxon kings, had, from the first origin of that kingdom, the full and direct dominion over the kingdom ambiguously termed by the name of "Scotland"; nor can we always decide whether any given act of homage performed by the Scots, after the grant of Lothian to Kenneth, was or was not intended more particularly for that last-mentioned country. It is sufficient for us to know, that the obligations of the Scottish sovereigns are such, as, in the Anglo-Saxon or Carlovingian age, might be demanded from an *Antrustion*, from one who had accepted the son of Cerdic as his "Lord, Protector, and Defender." The engagements contracted by a chieftain in the tenth century, when Feudality was still in its germ, are not to be measured by the standard of Pavia, Paris, or Bologna. A period existed when the act of homage performed by the Scots possessed a double character: it might be due in respect of the *Benefice*, or might proceed from an unbeneficed *Antrustion* commending himself to his Superior. But the Scots, kings and people, allowed this submission to grow upon them, even as similar relations had arisen within their own realm. The objections of the Scots, if valid, prove too much for the Scottish king. Neither Bruce nor Balliol would have derived any real advantage from the doctrines advanced by the advocates of Scottish independency. If the arguments employed against the supremacy of the English crown had been pursued, they would destroy the most valued rights of Scottish sovereignty.

Arguments by which the Scots attempt to disprove the Anglo-Saxon superiority,

How was the "Kingdom of Scotland" created or acquired? By what process did the king of Dunfermline gain the superiority of the soil from the Solway to the Orkneys? The pages of the

modern Scottish historians glance at events which the writers will hardly dare to explain or unfold. The men of Moray are subjugated by the sword. The Scoto-Saxons compel them to submit, and exact the oath of allegiance or fealty. They attempt to vindicate their ancient independence; and though, by a desperate policy, a great portion of this tribe is dispersed over the dominions of Malcolm IV., they still spurn their chains, and attempt to cast off the yoke by which they are enthralled. The Galwegians, governed by a native prince, and possessing their own laws, are even more stubbornly contumacious: they expel the Scots, and slay the officers of the Scoto-Saxon king. The Northmen of Caithness refuse their obedience, and declare that they consider themselves as the real owners of the land; and Torphin[1], Earl Harold's son, blinded and mutilated, is cast into the dungeon, where he expires, to expiate the treason which his father has committed by striving to assert the rights of his Scandinavian ancestors. All these "barbarous nations" were *rebels* in the judgment of the Scoto-Saxon kings. The English, and the Normans, and the Flemings, paid and rewarded by the lands of the Celtic tribes, composed the baronage of the Scoto-Saxon monarchs, and kept them on the throne; and the swords of these foreign and odious lineages alone insured the obedience, not only of the Picts and the "Wallenses" and the Galwegians, but of the Scots themselves[a].

capable of being retorted so as to destroy the legal superiority of the Scottish Crown over the Islands and Highlands, &c.

The Scottish, or to speak more correctly, the *Sassenach* historians of the present day, praise the energy of James I. in reducing to obedience the Highland chiefs who had thrown off "all respect to the mandates of the crown," and who "might "be considered as having returned to their *pristine independence* "*and barbarism*." But had they not a *right* to their independence and *barbarism*, if they preferred liberty to subjection under the Scottish monarch, and their native customs to the laws and usages

Sassenach feeling displayed by the modern Scotch historians who treat all attempts made by the Gael to regain their ancient liberties as acts of rebellion, though such attempts differed little (if at all) from the resistance opposed by the Scots to the English.

[a] The speech of Robert de Brus to David I. (Ethelredus Rievallensis, de Bello Standardi, p. 343) conveys the idea of a monarch entirely supported on the throne by the ascendancy of the non-Celtic portion of his subjects, and by the aid of foreign settlers. We may excuse the ill-humour expressed by the historians of Scotland, both ancient and modern, against the attempts made by the different tribes and nations to release themselves from the supremacy of the Lowlands. But we must deny the justness of the language, unless *they will allow the same to be applied to their own rulers.*

Part I. Ch. XX.

which a relentless *conqueror* attempted to enforce? In reading such expressions, are we not reminded of the lion and the painting? Had the Celtic tribes prevailed in the battle of the Harlaw[1], how would their bloody history have been told? and in the deeds which are often recounted as redounding to the glory of the Scottish sovereign, we ought only to hear the lament of the clan, and the widow's wail[a]. If national feelings, habits, patriotism in short,

[a] The proceedings of James I. in the parliament of Inverness, may be taken as illustrating the course pursued by the Scottish government. The Highland chiefs attend upon the summons or invitation of the king; as soon as they enter the hall, they are seized, chained and fettered, and cast into dungeons. The remainder of the story must be told in the words of my friend, Mr. Fraser Tytler (vol. iii. p. 252).

Upon this occasion, forty greater and lesser chieftains were seized; but the names of the highest only have been preserved: Alexander of the Isles; Angus Dow, with his four sons, who could bring into the field four thousand men from Strathnarven; Kenneth More, with his son-in-law, Angus of Moray and Makmathan, who could command a sept of two thousand strong; Alexander Makreing, of Garmoran, and John Macarthur, a potent chief, each of whom could muster a thousand men; along with John Ross, William Lesly, and James Campbell, are those enumerated by our contemporary historian; whilst the Countess of Ross, the mother of Alexander of the Isles, and the heiress of Sir Walter Lesly, a very rich and potent baron, was apprehended at the same time, and compelled to share the captivity of her son.

Some of these, whose crimes rendered them especially obnoxious, the King ordered to immediate execution. James Campbell was tried, convicted, and hanged for his murder of John of the Isles; Alexander Makreing and John Macarthur were beheaded, and their fellow-captives dispersed and confined in different prisons throughout the kingdom. Of these, not a few were afterwards condemned and executed; whilst the rest, *against whom nothing very flagrant could be proved, were suffered to escape with their lives*. By some, this *clemency* (!) was speedily abused, and by none more than the most powerful and ambitious of them all, Alexander of the Isles. This ocean lord, half prince and half pirate, had shewn himself willing, upon all occasions, to embrace the friendship of England, and to shake himself loose of all dependence upon his *lawful* sovereign, pp. 252, 253.

Compared with this atrocious breach of faith, Edward's conduct towards the Scots was mildness and mercy. The *lawful* dominion of James over the "ocean lord" was merely that of the strongest. The

can justify resistance to a foreign dominion, the meed of applause won by Wallace, is as fully due to Alexander of the Isles: and if Alexander "deservedly incurred the penalty of capital punishment" for breach of the allegiance due to James Stuart, it will be difficult to shew what plea could have been raised in stay of execution by Bruce, had he been arraigned as a forsworn traitor in Westminster Hall. How did the predecessors of James I. become the feudal Superiors of "broad Scotland"? Where were the records of the grants made by Malcolm Canmore? or the rolls containing the homages of his Barons? Could the charters by which the ancient Lords of the Isles acknowledged the superiority of the Sons of Fergus be produced from the treasury of Edinburgh? And if the proud Lords of Galloway denied their allegiance to the child of the Saxon Queen, it may be doubted whether the Justiciar of Lothian could find any better proof of their vassalage than the narrative of an English chronicler, equally attesting the obedience of the Scottish King[a]. Is there a Rageman-Roll[1] existing in Scotland like that bulky volume[b] which we can shew at the Tower of London, whereon every *Ceancinnith*, every *Ceantay*, every *Catheran*, subscribed the oath of homage and fidelity to a David, or an Alexander, or a James? Whatever lawful claims, if any, which the Lord of Lothian, Strath Clyde and Cumbria, taking the title of King of *Scotland*, possessed over these heads of the ancient Celtic lineages or the descendants of the Scandinavian earls, they had arisen like his own dependence; and every effort made by the King of Scots to release himself from the superiority of the English crown, justified

legality of the suzerainty of the crown of England over the Scots may be evidenced by the acts of homage; but where is the first homage of the Lord of the Isles? Mr. Tytler says, that the Celtic chiefs "opposed a mortal opposition to the settlement of all *intruders* within a country which they *considered* as their own," and that "their ravages in the Lowlands *called for redress*." That is to say, the Gael were deprived by main force of their lands, and treated as rebels *because* they presumed to defend themselves.

[a] Part II., *Proofs and Illustrations*, p. 654.

[b] The roll entitled, De juramentis homagii et fidelitatis *Edwardo* Regi *Angliæ* nominatim præstitis, per *unamquamque individuam personam* Regni *Scotiæ*. [Concerning the oaths of homage and fealty made to *Edward*, King of *England*, by name, by *every individual magnate* of the Kingdom of *Scotland*.]

(See II., p. 545).

the resistance presented to his power by those whom he called his subjects. William the Lion can scarcely be excused, even by the barbarity of his age, when he decreed that the son of Harold, unheard and untried, should perish in torture, because his father had violated his fealty. But the punishment of Wallace, however cruel, was warranted by the jurisprudence of England.

It is extremely possible, that in the earlier ages of the monarchy, the Scandinavian and Celtic chieftains *commended* themselves to the Scoto-Saxon kings, in the same manner as the Scots had done to Edward the Elder or to Edgar, and this subjection grew into the rights of feudal dominion, which the Stuarts, in more recent periods, exercised with so much rigour. If such acts of homage did not take place, the proceedings of the Scottish monarchs were mere acts of encroachment and aggression. Should a Scottish historian choose to adopt the *first* supposition, and assert that Galloway was held of Bruce or Balliol, his assertion compels him to admit that Scotland was the fief of the English crown. Preferring the *second* supposition, the epithets bestowed upon the English Edward must be transferred to the Scottish James, and whether the first or sixth of the name, they will be equally deserved.

But the better course, perhaps, will be to avoid all hard words and opprobrious epithets, for the question may be presented in such a form as shall not militate against the dignity of either realm. Margaret's descendants endeavoured to avoid an act, which, upon every repetition, was a disclaimer of the rights which they possessed, or fancied they possessed, by reason of their Saxon lineage. The successors of the Conqueror, in attempting so to employ their superiority as to break down the power of Scotland, were influenced, not only by the ordinary ambition of powerful Sovereigns coveting the possessions of weaker neighbours, but also by the remote apprehensions, excited by the claims, however shadowy, of the princes to whom the "dignity of the Anglo-Saxon kings had devolved."[a] They could not fail to see that the name of a pretender might be employed in encouraging the projects of those sturdy subjects or aspiring nobles, who sought either to limit the authority of the reigning monarch, or to expel him from the throne.

[a] Edgar Atheling, according to Fordun, during the reign of Donald Bane, concealed his nephews and nieces, to whom the hereditary right of the Anglo-Saxon crown belonged, somewhere in England. (Vol. i. p. 275.)

CHAPTER XXI.

Anglo-Saxon Government—Authority of Wessex, as the preponderating State—Imperial authority—Titles assumed by Egbert and his Successors—States composing the Empire, aggregated under one Head, but not united into one Monarchy—The Monarch separately inaugurated in each State—Anglo-Saxon Burghs—Scantiness of materials for their history anterior to the reign of the Confessor—The Danish Burghs—Lahmen or Lawmen—Municipal Magistrates—Free Burghs or Cities in the nature of Dependent Republics—Exeter—resistance of its Citizens to the Conqueror—Rights and Privileges of the Burghs—Legislative Assemblies—General or Imperial Witenagemot—Legislative bodies existing in the several States—Members composing the Witenagemot—Ecclesiastical Councils—Synods—Their effects upon the Temporal Legislatures—Laws enacted in the Imperial Witenagemot, and transmitted to the Dependent States for their acceptance—Functions of the Witenagemot in relation to Royal Grants—Criminal jurisdiction of the Witenagemot — Increase of its influence — Imperial Witenagemot, becomes a species of Political Congress—complicated character of the Imperial Witenagemot—Attendance given by the Thanes of the Danish Burghs—Discussion of the question, whether any Representatives attended from the Burghs in general?—Ancient Elections, how conducted—Customs and Usages creating the Witenagemot—Royal or Imperial Prerogatives—Title of Basileus—The King the Supreme Magistrate and Paramount Source of Remedial Authority—Judicial Eyres or Circuits of the Sovereign—Administration of Justice by the King in person—mode of exercising this authority—The Great Seal introduced by the Confessor—Effects of the innovation—The Clerks of the Chapel or Chancery—Features of the Anglo-Norman Administration discernible before the Conquest—No material alteration in the Theory of the Constitution under the Conqueror and his immediate Successors—Manner in which alterations were introduced—Theory of a compact between the Sovereign and the

People—Responsibility of the Monarch first taught by the Clergy —Constitutional rights at the close of the Anglo-Saxon Empire.

Part I. Ch. XXI.

Complicated principles of government amongst the Anglo-Saxons. Imperial authority of the line of Wessex, after the extinction of the royal title in the dependent kingdoms, though such kingdoms still continued independent of each other

In the physical world, we found our calculations not so much upon particular instances, as upon general averages. The same mode of reasoning applies to the measurements of the moral world. Therefore, when estimating the form and force of any government, allowance should be made for the accidental circumstances disturbing the height and level which the constitution of the state has assumed. Amongst Egbert's successors were numbered the weakest and also the most energetic monarchs of the English race. The sceptre, which trembled like a reed in the hand of the effeminate Edwy, became the awe and terror of the island when grasped by the mighty Edgar. We must combine the two extreme cases, and take the mean between them, in order to form a just opinion respecting the extent of power possessed by an Anglo-Saxon king.

The evidence proving the nature, extent, and exercise of civil or municipal authority. can never even possess a uniform complexion or character. Much is doubtful and imperfect; more obscure. We must receive it with all its imperfections, and often help ourselves by hypothesis. But until they are disproved, the titles appearing in the charter of the sovereign must be admitted as describing his dominions, though the chronicles may not disclose their extent. The acts of the monarch speak when the charter is silent. The designation of the magistrate indicates the whole organization of the burgh or city. We must often content ourselves with a hint; we are compelled to leap over chasms which never can be supplied. Yet so long as the different species of testimony support each other by their consistency and conformity, we may maintain that the consequences deduced from the whole body of such evidence are established with sufficient certainty, though some of the links may depend upon inference or conjecture.

Reasonings founded upon insulated facts are unsound, because an insulated fact is generally evidence of the exception rather than of the rule. A fact may, however, appear to stand alone, without being necessarily insulated. It may seem to be solitary, simply in consequence of our want of information; and if it belongs to a known and definite class, we are entitled to connect it with any other in the same category.

The "Basileus" of Britain, the King of all its Nations, the

Monarch of all Albion, and of all the surrounding Islands, the Ruler of all the Lands within the British Seas, the Defender of the Britons, the Governor of the Pagans, the Emperor of the Anglo-Saxons and Northumbrians[a], may be described as a sovereign reigning in two distinct capacities. Considered as king or lord of each particular state or community, he possessed rights analogous to those anciently exercised by the earlier rulers, who had been displaced or mediatized: but over the whole realm, the "Basileus" presided with an imperial authority.

Titles of the Anglo-Saxon monarchs.

In each of the principal kingdoms or "Lages," subjected to the imperial crown, the title of the sovereign required a distinct recognition. The descendant of Cerdic, called to the throne by the Witenagemot of Wessex, did not acquire his royal rights in Mercia, until the legislature of Myrcenlage accepted him as their monarch; and the recognition of Mercia or of Wessex had not, as such, any compulsory force upon the turbulent population of Northumbria[b]. It is true, that when Wessex took the lead, the other kingdoms generally followed the example of the more powerful state, without much opposition or visible reluctance: yet, in principle, they never allowed themselves to be blended and incorporated into one monarchy[c]. It may be objected, that there was but one coronation for the "Empire of the Saxons, the Mercians, and the Northumbrians." But this circumstance was not inconsistent with the separate *political* existence of the states which were thus imperfectly confederated. Considered by the Church as conferring a species of sacerdotal dignity, the *ordination* of the anointed king could not be repeated. Inaugurated in each separate kingdom according to the forms of the Civil Legislature, there was only one consecration, according to the rites which the Church had prescribed[d].

The recognition of the authority of the Sovereign on his accession; obtained from each of the leading States, separately and apart from the others.

But the Anglo-Saxon realm was not composed wholly of kingdoms and feudal sovereignties. The sceptre also waved

[a] See the observations upon the title of "Basileus," and the styles of the Anglo-Saxon Monarchs, Part II., *Proofs and Illustrations*, pp. 663–668.

[b] See the passages relating to the accessions of Athelstane, Part II., *Proofs and Illustrations*, p. 365, and of Edwy, id., p. 387.

[c] Thus the Northumbrians and Mercians accepted Edgar as King, leaving Wessex only to Edwy, Part II., *Proofs and Illustrations*, pp. 388, 389. Harold Harefoot is King of Northumbria and Mercia, id., p. 601. Ethelred, "Patricius" of Northumbria, id., p. 596.

[d] Part II., *Proofs and Illustrations*, p. 669.

Part I. Ch. XXI.

over other communities; and the privileges possessed by the cities or burghs were such as to render them important members of the empire. Originally, the Teutons abhorred the very name of a walled town. The protection of the lofty ramparts appeared synonymous with degradation and servitude[a]. When they planted themselves on Roman ground, their ancient maxims were forgotten. Occupying the Municipium or the Colony, they pursued their conquests from these points of defence, and enriched themselves with the spoils of wealth and civilization. But the followers of Hengist and Horsa who established themselves within the walls of Dorobernia, or the Anglian tribes who gained the city of Cunobeline, did not thereby surrender their freedom: and the reminiscences which the Britons preserved of the ancient municipal governments would tend to increase the independence and power of the "Burhware" or Burgesses to whom the land belonged. The invaders, however, had so greatly the preponderance, that the walled towns were organized like the open country. The Burgh, or the Wards composing it, assumed the form of a Hundred or a Shire; and the few deviations from this rule seem to occur either in the North or the West of England. In other parts, the British or Romanized British population was rapidly absorbed by the Anglo-Saxons; and, with the exception of the trading Gilds[1], which descend in a direct line from the "Colleges" of Operatives, only scanty vestiges of Roman municipal institutions can be discerned.

Towns and cities unknown to the primitive Teutons.

(See above, p. 271.)

No materials for the history of the constitution of the Anglo-Saxon Burghs anterior to Domesday.

When we examine the history of the Anglo-Saxon Cities or Burghs, we cannot, as in Gaul, deduce their political existence from the Roman era. And we must lament the irretrievable loss of all documents and records concerning their constitution, until we reach the last age of Anglo-Saxon history. Nor can we even venture to assert that the Domesday Surveys describe these communities as they existed prior to the reigns of the Danish kings. During the devastations and incursions of the Northmen, it is probable that many cities became wholly waste. We know that such was the fate of Chester[b]; and it may have fallen upon many other Roman colonies, whose walls and gates stood firm,

[a] Tacitus, Germania, c. 16.

[b] And when thus abandoned, it was occupied by the Danes; civitatem Legionum, tunc temporis desertam, intrant, Flor. Wigorn. ad an. 894. [They enter the city of the Legions, which at that time was deserted.]

though surrounding grass-grown streets and crumbling ruins. The so-called "Danish Burghs" were repeopled and colonized by the invaders; and won and lost by the Anglo-Saxon power. In other cities and shires, the Danish thanes are noticed as an integral part of the population[a]. The "Burhware" of London affected and copied the "barbarity" of their conquerors[b]. In our metropolis, the chief municipal court, the "Husting," still bears a Danish name, and remains a living monument of these ancient masters of England.

Danish Burghs, i.e. York, Lincoln, Stamford, Nottingham, and Derby, colonized by the invaders (see summary of their history II., p. 532).

Such changes having been sustained, we must abandon any conjectures as to the government of the burghs in the earlier periods. We must rest satisfied with the fact, that, in the reign of the Confessor, the larger burghs had assumed the form of communities, which, without much impropriety, may be described as territorial corporations. The legal character of the burgess arose from his possessions: it was a *real right* arising from the qualification which he held. The burgess was the owner of a tenement within the walls, and the possession might descend to his heirs, or be freely alienated to a stranger[c]. The "lawmen" of the burgh were so denominated in respect of the "mansi" which each held: the rights appertaining thereto were exercised by the owner, unaffected by the change of dynasty. The son of the Anglo-Danish magistrate and the Norman occupant are found, after the Conquest, in equal possession of the rights resulting from their land. "Lawmen" occur by name, only in the Danish burghs; but a similar territorial magistracy existed in other places. The soke of the ealdormen of Canterbury was transferable, like any other inheritance; and the possession of the land imparted to the lord the right of judicature in the burghmoot or municipal assembly[d]. Such functionaries were

Larger Burghs to be considered as territorial corporations. Rights of the Burgesses arising from their Burgage tenements.

Lahmen or Lawmen of Chester, Lincoln, &c. derive their authority from the "mansi," &c. which they held. Territorial Aldermanries of Canterbury.

[a] As in Lincoln (*Proofs*, p. 535) and Worcester (Hickes, Inst. p. 142).

[b] And this induced them, acting as a *State*, to join with the Danes in raising Harold Harefoot to the throne; elegerunt eum *Dani* et *Londoniæ* cives, qui jam pene in Barbarorum mores propter frequentem convictum transierant, Will. Malm., de Gestis, lib. ii. c. 12. [The *Danes* and the citizens of *London* chose him, for the latter had almost by this time been transformed into the manners of the barbarians through constant intercourse.]

[c] See the very curious descriptions of Gloucester and Winchcombe, in the Evesham Domesday (Part II., *Proofs and Illustrations*, pp. 851–853).

[d] See Somner, Canterbury, p. 97.

Part I. Ch. XXI.

lawmen or aldermen by *tenure*. Other burghs, however, may possibly have possessed an elective magistracy analogous to the continental Scabini, or the Inquest Thanes of the English Hundreds. Nor is it improbable but that the Gilds of Traders and Handicraftsmen possessed considerable influence; and the aldermen of these corporations may have been allowed to enter the Folkmoot, and to share in its proceedings.

(See above, pp. 80, 81, 101, 175.)

Qualified rights of sovereignty possessed by the King in the principal Cities or Burghs.

In the larger and more important cities, the rights of the king appear in the guise of a qualified sovereignty. Various payments and services were imposed upon the municipal communities; but, provided these dues were discharged, the king had nothing more to demand. William attempts to exact the oath of fealty from the citizens of Exeter: in reply, they declare the extent of their liberties and the limitation of his authority[a]. Tribute or Gafol, they would proffer to the king, such as was due to his predecessors; they would weigh out the eighteen pounds of silver; the "geld" would be paid, if London, York, and Winchester submitted to the tax: and if war arose, the king should have the quota of service imposed upon five hides of land. From the houses which belonged in demesne to the king, he should have his accustomed rents, but the citizens refused to become the men or vassals of the sovereign; they would not take the oath of fealty to him, nor allow the "Basileus" to enter within their walls.

Citizens of Exeter declare to the Conqueror that they are willing to render the accustomed tribute, &c., but that they will not swear fealty to him, nor allow him to enter within the walls of the city.

A City thus circumstanced, to be considered like Marseilles, as a species of republic *enclaved* in the territory of the King (see above, pp. 342 and 419).

A city whose inhabitants could thus boldly address their conqueror, may be described as a free State or Republic, though placed beneath the protection or liable to the exactions of the sovereign, by whose territory the community was surrounded. The defence of Exeter has preserved the memory of those franchises which the citizens asserted; and no reason can be found for rejecting the supposition that the rights of other burghs of the same class and order may have been equally extensive. Had they resisted, like Exeter, we should have known as much about them as we do of Exeter. It is scarcely probable, that the warlike Danish burghs, or the capitals of Wessex or of Mercia, should have been inferior to the capital of Damnonia: with respect to Winchester and London, their exclusion from the Domesday survey might afford reason for inferences as to the greater extent of the rights they enjoyed. Perhaps they would not allow the Royal Commissioners to enter within their walls.

[a] Ord. Vital., lib. iv. p. 510, and Domesday, Devenescire, p. 100.

Objections to the foregoing theory; and answers thereto.

But it may be urged, that this theory of qualified independence is contradicted by the acts of sovereignty which the Anglo-Saxon kings are known to have exercised. Such, for instance, was the right of appointing certain bishops whose cathedrals were placed within the great cities. But this power does not afford any valid ground of objection. The Bishop of London, though his Chair happened to be placed in the Church of St. Paul, was the prelate of the whole nation of the East-Saxons: and the Superior Monarch, call him Bretwalda or Basileus, appears to have claimed this right of nomination in all dependent communities, whether cities or kingdoms. Another argument may be founded upon the rights of property possessed by the sovereign in the burghs. These rights, however, are not inconsistent with the supposed franchise. The king might own a large proportion of the "mansi" and "hagæ,"[1] as in Winchester[a]: nay, many of the owners individually might be *commended* to him; and yet his pretensions as *Landlord* would not destroy the rights of the burgh. Even the appointment of a "Gerefa," or Præfectus, for the purpose of receiving and collecting the revenues due to the king, his proportion of the legal fines, or his share of the tolls and dues, would detract as little from the constitutional existence which we ascribe to the community.

A modern comparison will, perhaps, best explain the relative rights of king and burgesses. Imagine a Joint-stock Company hiring a mine: the company may be bound to pay a money rent, or to render the fifth part of the ore; and the lessor may be entitled to appoint an inspector with very extensive powers, for the purpose of preventing frauds. If the company fail to perform their covenants, the lessor may distrain or take possession of the mine: but so long as they well and truly conform to their stipulations, the company are entirely independent of the landlord or lessor; he has no right to interfere in their concerns.

What then was the situation of the Anglo-Saxon burghs? Rendering a light and easy tribute, and performing moderate services[b], they were protected against compulsory taxation. Beyond their settled and accustomed contribution, no pecuniary aid could be required, except by an illegal exertion of power.

[a] As appears from that most curious record, the "Liber Winton" (see Part II., *Proofs and Illustrations*, pp. 854–857).

[b] Thus the service due from Exeter was only equal to one Thane's fee (Part II., *Proofs and Illustrations*, p. 712).

Part I. Ch. XXI.

As a body, they were often, if not always freed from the feudal bond. The rights of the territorial magistracy resulted from their own internal constitution, and not from the nomination of the crown. The Lahman acted as judge, not by virtue of the King's "writ" and "seal," but because he owned the Mansus to which the judicial right or duty appertained; and if, as there is every reason to suppose, the election of Reeves and other similar officers by the Leet Juries has descended from the Anglo-Saxon age, the other functionaries were virtually appointed by the people. Legislation was the prerogative of the sovereign and his Witan: yet, though the laws, thus enacted, extended in general terms to all those who were subjected to his supremacy; still, the mode of accepting the statutes, and of carrying them into effect, depended upon the deliberations of the Burghmoot and the discretion of its members; and London was as much entitled to the name of a distinct state or community as the Kentish kingdom[a].

General laws, carried into effect by and through the "By-laws" enacted in the "Frith-gild" of London (see above, p. 160).

The Anglo-Saxon empire, according to the usual scheme of Teutonic government, which I have frequently had occasion to notice, was a species of federation, consisting of many states and communities, possessing unequal degrees of importance and privilege: kingdoms and principalities, whose rulers were bound by ties of vassalage: free communities, fully acknowledging the superiority of the crown, and yet, in many respects, acting as if they were independent of the general government: all aggregated under the dominion of one monarch, who claimed the supremacy of Britain. Tending to unite into one commonwealth, these *political units* were as yet unincorporated; nor were they connected by any permanent constitutional assembly possessing a *coercive* power over the whole realm.

Anglo-Saxon Empire, not a united Kingdom, but an aggregate of States and Communities, unincorporated, though tending to incorporation (compare with the constitution of the Carlovingian Empire). (See above, pp. 466–478.)

No permanent legislative assembly, possessing a coercive power over the whole realm.

In the smaller kingdoms, such as Kent, the "Witenagemot," the Assembly, or Council of the Wise[b], did not probably differ materially in composition from the "Shiremoot," which assembled on Pennenden Heath in subsequent times. The prelates appear

Witenagemot, originally not differing from the Shiremoot of subsequent times.

[a] This by-law, or "gerædnes," is said to be made by the Bishops and Gerefas who belong to London. By the first, are probably intended the Archbishop of Canterbury and the Bishop of London. It was confirmed by the "oaths and pledges" of all, Earl and Churl, "ægther ge eorlisce ge ceorlisce" [both nobles and churls].

[b] For the various imports of the term *Witan*, see above, p. 115 and Part II., *Proofs and Illustrations*, p. 733.

as the first order in the community. The Seniors, Earls, or Ealdormen, are convened, not only in the character of chieftains, but also by virtue of the bond of "trust," which connected them with their sovereign. The thanes gave suit and service, as principal landlords. And the ceorls, attending for the townships, listen to the promulgation of the decree, declare their grievances, and *present* the trespasses committed in the communities to which they belong. The actual appearance of the foregoing classes, is not a matter of hypothesis but of evidence: the document lies before us in which they address their sovereign[a]; and, with respect to the functions exercised by the ceorls, the testimony of the Anglo-Saxon laws[b] receives the fullest corroboration from the universal usage of subsequent times. In the Hundred Court, the Shire Court, and in every species of Folkmoot, each township was constantly represented by the Four Men and the Reeve, with some slight variations as to form. Sometimes the Tithing Man was added, or the Reeve might be absent, but the principle was maintained: and, till a comparatively recent period, we can trace the custom of asking the advice or obtaining the assent of the people, by means of representatives attending for the Anglo-Saxon communities[c]. Consulting our Records, we discover that

Representation of the Townships by the Four Men and the Reeve (see above, pp. 96 and 225).

[a] See the address of the Kentish men, Episcopi, Thayni, Comites, et Villani, to Athelstane (Part II., *Proofs and Illustrations*, pp. 170, 467).

[b] Whatever may have been the date of the actual compilation of the laws ascribed to Henry I., they are the faithful evidence of Anglo-Saxon usage. In them (§ 7) we find the attendance of the men of the township most explicitly noticed.

[c] In the Shiremoot of Hereford, the Lordship of Archenfield was represented by six or seven of the best men of the Wallishry (*Proofs*, p. 713). They were summoned or convened at the pleasure of the Sheriff. Defaulters forfeited an ox. They gave suit and service in the Hundred in like manner. In this case it is difficult to decide whether the custom be British or Anglo-Saxon. In the West of England, the suit and service appears to have been performed by one Tenant from each Tithing. But the Four Men and the Reeve attended, as usual, to make presentments. In East Anglia, Four Men and the Reeve appeared from every Township, the houses or hearths contributing in turn. For the conventions of the Four Men and the Reeve, see above, pp. 243, 248. In 9 Edw. III. Three or Four men from every Wapentake were summoned by the Sheriff to appear before the Council at York, at the same time that the principal military Tenants of the county were summoned by special writ. (Rot. Claus. 9 Edw. III. m. 16.) Owen Glendower is

Part I. Ch. XXI.

this delegation existed by immemorial usage in every part of the Anglo-Saxon territory. In the Shires of Wessex, we find Ealdormen elected by the suitors of the Hundred, and appearing for the Hundred in the Shire Court: and although their attendance is only recorded upon the rolls of the fourteenth century, this institution bears the character of the most remote antiquity.

Elective Ealdorman of the Hundred chosen by the Suitors, and appearing as the representative of the Hundred in the Shiremoot. (See II., p. 687.)

In some of the Shires, it is possible that each Hundred appeared by its Echevins. The Boroughs thus answered by their Twelve Jurors, the successors of the Scabini, in the Court held before the Justices Itinerant, and which retained the form of the ancient Shiremoot. Taking all these circumstances together, we may be led to the supposition that the elected or virtual representatives of Townships and Hundreds constituted the multitude, noticed as the *people*, in the narratives describing the great councils and other similar assemblies; for the share taken by the *folk* in the proceedings forbids the conjecture that the bystanders were a mere disorderly crowd[a], brought together only as spectators, and destitute of any constitutional character.

Dependent kingdoms retained their separate

In the earlier periods, a dependent or vassal kingdom retained its own Legislature, sitting and acting distinct from the Legislature of the paramount kingdom[b]. But the Witenagemot

said to have summoned a *Parliament* at Harlech, composed of Four men from each Commot; il ad somoné un *Parlement* a Hardlegh l'ou serront *quatres des plus suffisaunts persones de checun comote* parmy toutz Gales soubz sa obeisaunce esteauntz, Letters illustrative of English History, by Ellis, Second Series, vol. i. p. 43. [He has summoned a *Parliament* at Harlech where will be *four of the most sufficient men of each commot* throughout Wales, being subject to his rule.] Kett the Tanner, sitting beneath the *Oak of Reformation*, administered justice, held his courts, and enacted his laws, *with the advice of two Deputies from every Hundred.* (Blomefield, Norfolk, vol. ix. p. 227.) This singular meeting bears great analogy to the convention of the Neustrian peasantry (see above, p. 474). Had the bold East Anglian any reminiscences of the Anglo-Saxon age?

[a] So that when, according to the common law, a jury was to be completed *de circumstantibus*, the summoners, by going into the body of the Hall, found as many Hundredors as they needed.

[b] Thus the charter of Cenwulf, "Rex *Merciorum* atque provinciæ *Canciæ*" [King of the *Mercians* and of the province of *Kent*], is first confirmed by the Mercian Witenagemot, and afterwards by the "Satrapes *Cantuariorum*" [the Chief of the men of *Kent*], sitting at Canterbury (Part II., *Proofs and Illustrations*, pp. 462, 463). The archbishop is one

convened by the Basileus was the general Diet or Placitum of the empire. Here the King of Albion appeared, wearing his crown, and surrounded by his great officers of state. The Prelates concurred in the enactments. The vassal kings, the rulers of the Cymric and Celtic tribes, testified their obedience. The Earls and Ealdormen and Thanes, whether of Anglo-Saxon race, or the Northmen settled in the Danelaw, completed the Assembly, which comprehended all the Counsellors and Sages, Redesmen and Witan, both Clerks and Laymen, whose advice and assistance the Sovereign was entitled to demand[a].

legislatures, notwithstanding the unions of the Crowns.

(See II., pp. 322, 323)

An assembly of this nature, which, from the rank and station of the individuals whom it included, may be considered as representing the whole empire, could only be convened under a paramount sovereign; by one whose summons would be obeyed from sea to sea. The first plan and scheme may have existed under the earlier Bretwaldas. But we cannot affirm that, before the reign of Edward the Elder, the Imperial[b] Witenagemot had assumed either permanence or consistency; and from that period only do we become acquainted with its organization. The clergy assembled simultaneously with the laity. The hierarchy constituted the bond of the empire. Distinctions of nation or people had no place in the synod. The Church formed one body or corporation, however much the State might be divided. Whatever inequalities might exist between the rights of the Kingdoms included in the Archiepiscopal Province, every Diocese would be subject to the same law. The Bishop of East Anglia and the Bishop of West Wales taught one doctrine and claimed a common immunity. Pursuant to the mandate of either Metropolitan, the Clergy assembled in Synod, regardless of the barriers imposed by

Ecclesiastical Synods amongst the principal causes producing such tendency to union.

of them. Mercia had its "Senate" under the Ealdorman Ethelred (id., pp. 308, 506, 507). But the Under-King or Ealdorman summoned his Witenagemot by permission of his Superior (id., p. 500).

[a] For the constitution and conformation of the Witenagemot, one general reference may be made to the Summaries of Anglo-Saxon History (Part II., *Proofs and Illustrations*, pp. 327–610), and the appended charters. The curious charters (id., pp. 298–324, and p. 176) which contain the names of attending members, may be also consulted. Further examples, explaining the constitution and proceedings of these councils, are given in the Essay upon the Witenagemot, id., p. 732. For the Officers of State, see id., p. 672, &c.

[b] This term, for which there is no ancient authority, is used to distinguish the States General from the *Local States*.

Part I. Ch. XXI.

temporal jurisdictions. In a national council, the King of Albion might listen to the petitions or exhortations of every prelate who acknowledged the jurisdiction of York or Canterbury. And since a "Mycel-gemot," for the despatch of temporal business, was seldom held without a concurrent ecclesiastical council, we may estimate the effect produced by the attendance of the clerical members. The association of the priesthood assisted in connecting the lay communities. A model was furnished for the Legislature by the example of that order which possessed most importance in the State. The ealdormen and subreguli were familiarized to the idea of unity of jurisdiction. If they chose to adopt the scheme, they might borrow a complete and symmetrical plan of territorial representation. At all events, a large and influential portion of the highest class in each kingdom was thus brought together, and taught to act together, in obedience to one impulse and one mind.

Imperial Witenagemot, not a legislative assembly, possessing coercive authority over the whole realm. Similar in this and in other respects to the general Placitum of the Franks.

(See above, p. 466.) Proceedings of the Council of Cealchythe, A.D. 785 (see above, p. 140). Canons enacted in the Council held for the Province of York and the Kingdom of Northumbria, brought into the Council held for the Province of Canterbury and Empire of Offa.

Like the general Placitum of the Franks, which it resembled in so many other respects, the imperial Witenagemot was not a legislative assembly, in the strict sense of the term, for the whole Anglo-Saxon empire. Promulgating his edicts amidst his peers and prelates, the king uses the language of command; but the theoretical prerogative was modified by usage, and the practice of the constitution required that the law should be accepted by the Legislatures of the several kingdoms. We discover this plan in the proceedings of the ecclesiastical councils. When the imperial supremacy happened to be divided, the canons passed and decreed in the council of the Province of York and confirmed by Elfwald and the Northumbrian Witenagemot, were transmitted by the legates to the council of Canterbury and the Mercian Witenagemot; and, recommended by the opinion and example of the Northern metropolitan, they were gladly adopted by Jaenberht and his prelates, and the "glorious Offa[a]

[a] The supremacy of Offa does not appear to have been recognized north of the Humber. The canons were read to the Witenagemot in *Teutonic* (i.e. Anglo-Saxon or English) as well as in Latin. The Legates relate the proceedings:—

His peractis, et data benedictione, perreximus, assumptis nobiscum viris illustribus, Legatis Regis et Archiepiscopi, Maluinum videlicet et Pyttel, Lectores; qui una nobiscum pergentes, et ipsa decreta secum deferentes in concilium *Merciorum*, ubi gloriosus Rex *Offa*, cum Senatoribus terræ, una cum Archiepiscopo *Jaenberchto*, sanctæ ecclesiæ

and his Senators." In this case there was a friendly conformity; the example was followed because it was good and laudable.

The proceedings of the civil Legislature wear a different aspect. The "Basileus" speaks in the tone of prerogative; Edgar does not merely recommend, he commands that the law shall be adopted by all the people, whether English, Danes, or Britons, in every part of his empire. Let this statute be observed, he continues, by Earl Oslac, and all the host who dwell under his government, and let it be transmitted by *writ* to the ealdormen of the other subordinate states. In subsequent periods, the same plan was pursued with respect to the convocations of the provinces, the canons enacted by the Province of Canterbury being accepted almost as a matter of course by the Northern Province of York. And yet, in defiance of this positive injunction, the laws of Edgar were not accepted in Mercia until the reign of Canute the Dane. It might be said, that the course so adopted constituted an exception to the general rule; but, in the scanty and imperfect annals of Anglo-Saxon legislation, we shall be able to find so many examples of similar proceedings, that this mode of enactment must be considered as dictated by the constitution of the Empire. Edward was the Supreme Lord of the Mercians, but more than a century elapsed before they obeyed his decrees. The laws of the glorious Athelstane had no effect in Kent, the dependent apanage of his Crown, until sanctioned by the Witan of the Shire. Canute himself, the "King of all England," could not compel the Northumbrians to receive his code, nor was it their law until the reign of the Confessor, when such acceptance became a part of the compact upon the accession of a new earl. Faint traces of this independence may be observed

Analogous course prevailing in those councils or legislative assemblies which were purely temporal. Laws of Athelstane transmitted to the Kentish Witenagemot, and accepted by them (see II., pp. 170, 467).

Edgar declares that his laws shall be adopted by English, Danes and Britons, and they are transmitted by writ to the Earl Oslac (Northumbria) and Ealdorman Aylwin (East Anglia) (see II., pp. 408, 409), yet they were not adopted in Mercia until the reign of Canute in 1018 (id., p. 505).

Laws of Edward the Elder not accepted in Mercia until 1022 (id., p. 505).

Laws of Canute renewed in Northumbria 1066 (see II., p. 605).

Compare with the legislation of the dependent nations composing the Carlovingian Empire (see II., pp. 800–812).

Dorovernensis, et cæteris Episcopis regionum convenerat: et in conspectu concilii, clara voce, singula capitula perlecta sunt; et tam Latine quam Teutonice, quo omnes intelligere possent, dilucide reserata sunt, Concilia, vol. i. p. 151. [When the business was finished and the blessing had been given, we proceeded and took with us certain distinguished men, representatives of the King and the Archbishop, to wit, the Readers, Maluin and Pyttel; who went with us and produced the decrees in the Council of the *Mercians*, where the glorious King *Offa* had assembled with the Senators of the Kingdom and *Jaenberht*, the Archbishop of the holy church of Canterbury, and the other Bishops of those parts; and in the presence of the Council, each chapter was read in a clear voice, and was clearly explained both in Latin and in English, so that every one could understand.]

Part I. Ch. XXI.

in subsequent periods, and the last vestige of the constitutional separation of Northumbria is perhaps discernible in the Parliament of 11 Edw. I., which was divided into two conventions, the one, for the counties of York, Cumberland, Westmorland, Northumberland, and Lancaster, at York; the other, for the counties south of Trent, at Northampton.

Legislation only a small portion of the business of the Witenagemot.

Legislation constituted but a small portion of the ordinary business transacted by the imperial Witenagemot. The wisdom of the assembly was shewn in avoiding unnecessary change. Consisting principally of traditionary usages and ancestorial customs, the Law was upheld by opinion. The people considered their jurisprudence as a part of their inheritance. Their privileges and their duties were closely conjoined: most frequently, the statutes themselves were only affirmances of ancient customs, or declaratory enactments. In the Anglo-Saxon Commonwealth, therefore, the legislative functions of the Witenagemot were of far less importance than the other branches of its authority. The concurrence of the Witan in grants made by or in the name of the king, was one of those branches. All Royal Charters or *Landbocs* were promulgated in these assemblies. The gift is made with the knowledge or assent of the Optimates. Unless they assented, no valid alienation could be made of the royal demesnes. By their authority the *Landboc* was issued or renewed[a].

Royal grants promulgated in the Witenagemot. Analogous usages under the Anglo-Norman Sovereigns.

Yet, in these transactions there is reason for supposing that the king frequently acted only in a ministerial capacity, and that the grant, being made upon a previous *resignation*[b], was only the means of effecting the transfer of the land. In a great number of cases, these apparent concessions or donations may also have been consequent upon the renewal of homage, either when the heir received investiture, or when the lord ascended the throne. The members of the Witenagemot were the "Pares Curiæ" of the kingdom. How far, on these occasions, their opinion or their equity controlled the power of the crown, cannot be ascertained. But the form of inserting their names in the "*Testing Clause*," was retained under the Anglo-Norman reigns: and the sovereign who submitted his charter to the judgment of the Proceres, professed to be guided by the opinion which they gave[c].

[a] Part II., *Proofs and Illustrations*, pp. 308, 309, nos. 9 and 10.

[b] See above, pp. 438, 439 & Part II., *Proofs and Illustrations*, p. 749.

[c] Thus Henry II. renewed the Battle Abbey charters, Part II., *Proofs and Illustrations*, pp. 107–109.

As the "Pares" of the empire, the Witenagemot decided the disputes between the great vassals of the crown. Hoel Dda thus submitted to the decision pronounced concerning the Commots of Ystradwy and Ewias. The jurisdiction exercised in the Parliament of Edward I., when the Barony of a *Lord-Marcher* became the subject of litigation, is entirely analogous to the proceedings thus adopted by the great Council of Edward, the son of Alfred, the Anglo-Saxon King.

(See above, p. 386 and II., p. 363.)

Criminal jurisdiction of the Witenagemot.

In this assembly, the king, the prelates, the duces, the ealdormen, and the optimates passed judgment upon all great offenders. Here sentence of banishment, or of outlawry, virtually amounting to capital punishment, was pronounced[a], and the lands, possessions and honours of the culprit declared to be forfeited to the crown. In the cases thus quoted, the transgressors were nobles of the highest order, ealdormen or earls. Such trials may have taken place in the Witenagemot, on account of the importance of the cause: or perhaps they were brought within the cognizance of this high tribunal, pursuant to the principle, that no one could have jurisdiction over the king's thane, except the king.

Increase of the influence of the Witenagemot from the reign of Edgar.

Considered as a political assembly, the Witenagemot advanced rapidly in power; an advance, accelerated not only by the prosperity, but by the misfortunes of the realm. The sovereign could not compel the obedience of the different nations composing the Anglo-Saxon empire. Hence, it became the more necessary for him to conciliate their opinions, if he solicited any service from a vassal prince or a vassal state beyond the ordinary terms of the compact; still more so, when he needed the support of a free burgh or city. And we may view the Assembly as partaking of the character of a political congress, in which the liegemen of the crown, or the communities protected by the "Basileus," were asked or persuaded to relieve the exigencies of the State, or to consider those measures which might be required for the common weal. The sovereign was compelled to *parley* with his dependents.

Assemblies of the Witenagemot convened by the Basileus, approaching to the character of political congresses.

(See above, p. 466.)

In the Witenagemot, considered as a political congress, the members who adopted

It may be doubted whether any one member of the empire had power to legislate for any other member. The regulus of Cumbria was unaffected by the vote of the earl of East Anglia, if he chose to stand out against it[b]. These dignitaries

[a] Part II., *Proofs and Illustrations*, p. 315, no. 16; p. 318, no. 17; Sax. Chron. 1051, 1055.

[b] See above, p. 371, for Malcolm's refusal to contribute to the Danegeld.

Part I. Ch. XXI.

any particular measure could not bind those who did not concur.

constituted a congress, in which the sovereign could treat more conveniently and effectually with his vassals than by separate negociations. It was in such an assembly that the Witan agreed to render that fatal tribute, the Danegeld. But the determinations of the Witan bound those only who were present, or who concurred in the proposition: and a vassal, denying his assent to the grant, might assert that the engagement which he had contracted with his Superior did not involve any pecuniary subsidy, but only rendered him liable to perform service in the field[a]. Most of the great "Gemoots" or assemblies enumerated in the chronicles appear to have been of this ambiguous character, conventions of the prelates, nobles and optimates of the land, who, sometimes compelled by the imminent necessity of the case, and sometimes stimulated by the desire of forwarding their own plans

[a] See above, p. 371 and Part II., pp. 407, 408. The doctrine that a parliamentary grant only bound the parties who had assented thereto, appears to have prevailed in the reign of Edward II. About that time, says Madox, it became a general opinion amongst men, that if they consented they were answerable, and that if they did not consent, they were not answerable for the prestation or payment charged on them.

In the first year of K. *Edward II. Walter de Stapeldon*, Bishop elect of *Exeter*, one of the Executours of *Thomas Button* or *Bitton*, late Bishop there, complained to the King in his Council, that whereas the said deceased died before the time when the Earls, Barons, and Communities of Counties of *England*, granted to the King for his subsidy a *twentieth* of their *moveable goods*, and the Citizens and Burgesses of *England*, and the Tenants of the ancient demeane of the Crown a *fifteenth* of their moveable goods, and that the deceased was never in his lifetime requested to grant the King the said subsidy, nor gave his consent to the grant thereof; that, nevertheless, the Taxours and Collectours of the said *twentieth* and *fifteenth* in the county of *Devon*, taxed the *goods and chattels* which the said deceased had on the day of his death in that county, to the said *twentieth* or *fifteenth*, and went about to levy the same, unjustly, Baronia Anglica, pp. 116, 117. Madox adds an extract from the Record. It does not appear certain that this plea prevailed. But all circumstances render it exceedingly probable, that, in the earlier ages of Parliament, the assent of every individual Baron was almost always obtained, either by fair means or foul; and that the majority, supposing a division took place, had no clear right to bind the minority. In the States of Flanders, an absolute unanimity was required, the dissent of any one town arrested the whole proceeding.

and views, took upon themselves to extend their functions beyond their original powers. Authority, however, always strengthens by exercise; and it is probable that the imperial Witenagemot of Wessex would ultimately have been consolidated into the States General of the Anglo-Saxon empire[a].

The Imperial Witenagemot, or the Assembly convened by the Basileus, probably included a Shire Court for the district in which it was held, and a Land-gemot for the kingdom.

If it be allowable to pursue our conjectures, supported in some degree by historical parallels, we may suppose that the assembly convened by the Basileus, and which for want of a better term I have called the "imperial Witenagemot," was a *Shire Court* for the district in which it was held; a *Land-gemot* for the particular kingdom; and an *Imperial Witenagemot* for the whole empire. In such a case, the Lay Assembly would contain within it three classes of members: or rather there would be three assemblies, appearing, at this distance of time, as resolved into one; but which would be perfectly distinguishable by a contemporary.

Assuming that King Edward "wore his crown" at Winchester, all the members of the Shire of "Hamtun," including the Reeves and Men of the townships, would attend *de more*. The earls and royal thanes of Wessex would be convened pursuant to special writs. And the general proclamation[b] would require the attendance of the Scottish and British Reguli or kings, the great Earls of Mercia, and East Anglia, and Northumbria, and all the other Heads of communities, whether burghs or shires, even from the most distant confines of the island. A statute enacted in such an assembly would acquire legal validity in *Wessex proper*, without any further promulgation, the West Saxon Witenagemot being included in the Imperial Witenagemot; whilst in the other states, the Ordinance would not take effect until accepted and re-enacted in manner before described.

The attendance given by the great earls or ealdormen, and by the thanes, the feudal tenants of the crown, is proved by every Anglo-Saxon charter: and there are very strong reasons for supposing, that a landed qualification, of definite extent, was requisite to obtain a seat in the assembly[c], unless the member

[a] There are indications that if Normandy and England had continued under one crown, a union would probably have been effected by time and custom between the duchy and the kingdom. See the proceedings of the Council of Verneuil under Henry II. A.D. 1177. (Benedictus Abbas, p. 248.)

[b] See Part II., *Proofs and Illustrations*, p. 707.

[c] See Part II., *Proofs and Illustrations*, p. 734.

Part I. Ch. XXI.

held his station as a great officer of the crown, or perhaps as a municipal magistrate. The authority of the Anglo-Saxon imperial Legislature differed most materially from that of an old English parliament; but its conformation approached to the shape which parliament afterwards assumed.

Upon the connexion between *remedial representation*, or the attendance given for the purpose of carrying the law into effect, and Parliamentary representation, I have already spoken sufficiently. We may discover other means, whereby branches possessing some analogy to the more modern House of Commons, might have been formed. That the thanes of the Danish cities or burghs were members of the Witenagemot, is indisputably proved[a]. Their attendance is stated by historians, and attested by charters. Indeed, when we consider the station held by those powerful nobles, there would be some difficulty in pointing out any principle upon which they could have been excluded. Nor is it very probable that the ealdorman who ruled the burgh was destitute of the rights possessed by the ealdorman who presided in the shire.

(See above, p. 256.)

Thanes of the Danish Burghs attend in the Witenagemot.

Whether on special occasions, and for particular purposes, the greater burghs might not form conventions separate from the Witenagemot is a conjecture not entirely unworthy of attention. The federative union of the Cinque Ports, so truly Anglo-Saxon in the organization of its courts, appears to have existed from time immemorial. The Danish burghs are always noticed as if they constituted a recognized state or community[b]. Some species of mutual concert would seem to have been necessary amongst the burghs which could not be required to pay the Geld, unless they contributed simultaneously[c]. Exeter was one of these communities: and the city so distinguished, attempted to form a defensive confederation with the other burghs against William the Conqueror[d]. An opposition to the intrusive sovereign might naturally have induced the citizens to enter into an alliance with the *Shires* of Devon or Dorset. But this league bespeaks a consciousness that the *Burghs* formed a class apart,

Probability that the great Anglo-Saxon Burghs may have formed conventions amongst themselves, analogous to the convention of the Scottish Burghs, the Hanse Towns, the League of the Lombard cities, &c.

Exeter confederates with other Burghs against the Conqueror.

[a] Sigferth and Morcar were slain whilst attending the Witenagemot at Oxford (Part II., *Proofs and Illustrations*, p. 532). They are described as Milites in the charter of Ethelred (id., pp. 318–322, no. 17), in which they also appear as members of the assembly.

[b] Part II., *Proofs and Illustrations*, p. 532.

[c] See above, p. 554.

[d] Ord. Vital., p. 500.

possessing interests and privileges distinct from the open country, and that they were accustomed to co-operation.

Admitting the great probability that the burghs did constitute a branch of the Witenagemot or "Mycel-getheaht," it must be recollected that the members, by whom they appeared, would scarcely attend in the character of *mere* deputies. Popular election, in our modern sense of the term, rarely (if ever) existed. The functionaries who ruled the burgh became the proper and natural representatives of the community in the legislative assembly or in the congress: and if the imperial Witenagemot was intended in any wise to protect the privileges of the nation, the heads of the burgh would be the most efficient advocates and defenders of their community. But it was hardly possible that all the magistrates could attend. Had the twelve "Lawmen" of Lincoln journeyed in a body to Winchester, when summoned by the Confessor's "Gewrit," the burgh would have been without government or rule. According to the natural course of affairs, therefore, the twelve magistrates would assemble in their Moot Hall, and, by mutual understanding, *Hardecnute* and *Swartinc* would be nominated to act on behalf of the bench, as well as of the burgh which they ruled. At the next Witenagemot, *Hardecnute* and *Swartinc* might seek to be excused from a repetition of the toilsome journey, and *Ulf* and *Walraven* would undertake the duty. In these proceedings there would not be any formal election: but the nomination would be effected by that kind of accommodation and arrangement which usually takes place in small committees or bodies; or somewhat in the way that the Leet Juries still elect the Reeve or the Borsholder of the township, tithing, or manor. A further stage might take place in this species of representation. Contingencies might arise, which would prevent any of the twelve magistrates from quitting the city. Popular commotions or hostile invasion would keep them at their station; and these hindrances would occur exactly at the time when their advice in the Supreme Council would be most required. In such a case the expedient of authorising a person, not bearing office, to appear as a deputy, in the name and on the behalf of the magistracy, would be easily suggested, and a representation approximating to the modern system would be formed.

Reasons for supposing that popular election rarely (if ever) existed.

For the twelve Lawmen or governing body of Lincoln (see II., p. 536). Reasons for supposing that they would attend the Witenagemot by a deputation whom they would nominate from amongst themselves, without any formal election,

or, in special cases, they might appoint a Procurator, not being one of their body (see II., p. 812).

Repeating the observations applied to the Carlovingian empire, and which bear equally upon the state of Anglo-Saxon Britain, it is impossible to point out the proportion of the different

(See above, p. 474, &c.

Part I. Ch. XXI.

laws and usages united in the formation of the Witenagemot, or of those assemblies which ultimately expanded into Parliament. Romans and Britons may have concurred with our Anglo-Saxon ancestors. The great irregularities and anomalies apparent in our institutions; and the difficulty, or rather impossibility, of explaining them upon the presumption of any uniform system, will, if duly weighed, contribute to reconcile us to this supposition. However impracticable it may be to follow the theory in its details, it results from the only principles by which we can be safely guided in attempting to develope the history of the middle ages.

Influence of the Duodenary Courts, or of the bodies which replaced them, in creating the legislative and municipal institutions in England (see above, pp. 90–109).

In Anglo-Saxon Britain, however, we may generally discern one predominating element. The Duodenary Courts, or those bodies which replaced them, are perpetually re-appearing. And in the great majority of instances, whenever the form and mode of election can be traced, it is found to have been vested in Duodenary *Committees*, acting on the part, and in the name of the community.

Theory of the Anglo-Saxon Monarchy.

Whatever constitutional restrictions may have been imposed upon the ruler of the Anglo-Saxon realms, they were deemed to be consistent with a supreme and transcendent authority. Edgar declared that he wielded the sword of Constantine[a]. The

Imperial title of "Basileus" assumed by the Sovereigns of Wessex. Inferences drawn from the assumption of this title.

title of "Basileus," retained in Britain till the reign of the Confessor, the last legitimate Anglo-Saxon king, is in itself an important token of the prerogative asserted by the sovereign, or attributed to him by his advisers. For the reasons before stated, I lay great stress upon the pageantry of royalty, whether in language or in costume, whether addressed to the eye or to the ear: and the use of the title of "Basileus" is peculiarly remarkable, since no other sovereign in Western Christendom presumed to write himself like the Eastern Cæsars[b]. Nor must it be supposed that an ignorant vanity induced the Anglo-Saxons to borrow this lofty style, imitated from the ceremonial of Byzantium; they knew its import and its weight. Much communication took place between England and new Rome. The effects of this intercourse are to be traced in the barbarous hellenisms

[a] The passage occurs in Edgar's celebrated oration addressed to the clergy; Ego *Constantini*, vos *Petri* gladium habetis in manibus, Ethelredus Rievallensis, de Genealogia Regum, p. 361. [I have the sword of *Constantine*, you have the sword of *Peter* in your hands.]

[b] See above, p. 419 and Part II., *Proofs and Illustrations*, p. 663.

of the charters and the chroniclers[a]. When the monk Hadrian[1] traversed Gaul on his road to Britain, he was arrested by Ebroin, the Mayor of the Palace, upon suspicion, lest he might be a secret ambassador despatched by the Byzantine emperor, for the purpose of injuring the interests of the Frankish monarchy[b]; and this circumstance seems to indicate that relations subsisted between Britain and Constantinople, of which historians have not preserved any notice or memory. Nor were the doctrines of the civil law unstudied or unknown. All the secrets of this subtle lore had been unfolded to the learned Aldhelm[c]: and the fragments are yet extant, displaying the knowledge of the Roman jurisprudence possessed by the sages of Anglo-Saxon Britain[d].

Aldhelm, Bishop of Sherborne, 705, 709. His proficiency in the Civil law.

Claiming to be the paramount legislator, the "Basileus" was, in fact, the supreme Judge and Magistrate of the realms over which he presided. Under the reign of Edgar, the diligent and rigid administration of justice by the sovereign, must have given him a power beyond the law. He was always in the view of his subjects, always in their mind, the object of terror to the offender, of awe to the peaceable: and the punishment inflicted upon the robber, would tend to appal every contemner of royal authority. Twice in each year, the "Basileus," in whose person the highest functions of remedial jurisdiction were concentrated, visited every part of the dominions over which he had been called to rule[e]. Charlemagne discharged these duties by his Missi,

Edgar's rigid administration of the law (see II., p. 183), the means of increasing his personal influence.

[a] Part II., *Proofs and Illustrations*, p. 292.

[b] ...quoniam suspicabatur eum habere aliquam legationem Imperatoris ad *Brittanniæ* Reges adversus regnum, cujus tunc ipse maximam curam gerebat, Bede, lib. iv. c. 1. [Since he suspected him of being engaged on some embassy of the Emperor to the Kings of *Britain* against the kingdom, of which he was the ruler at that time.]

[c] Neque enim parva temporum intervalla in hoc lectionis studio protelanda sunt, ei duntaxat qui sagacitate legendi succensus, legum Romanarum jura medullitus rimabitur, etiam cuncta jurisconsultorum secreta imis præcordiis scrutabitur, Vita Aldhelmi, p. 6. [For no small stretches of time have to be prolonged in this pursuit of reading, at any rate on the part of the man who, inflamed with zeal for studious investigation, will explore to the marrow the principles of Roman law and likewise will search to the very heart the distinctions of the jurisconsults.]

[d] The treatise to which I allude is contained in the Holkham MS. from which I have published the Laws of the Conqueror.

[e] See Will. Malm. de Gestis Regum, lib. ii. c. 8, and above, p. 232.

Part I. Ch. XXI.

just as our Anglo-Norman monarchs despatched their Justices Itinerant: but Edgar made his circuits in person; and, proceeding from *Folk* to *Folk*, from Shire to Shire, from Earldom to Earldom, and from Kingdom to Kingdom, he listened to the supplications of the lowly, punished the unrighteous functionary, and rectified or amended the judgments of all in power.

Judicial Eyres or Circuits of the Sovereign (see also above, p. 233) as the supreme Magistrate and source of remedial authority.

These Eyres, diligently performed by the monarchs of the Anglo-Saxon empire[a], presented the "Basileus" to all the subjects and dependents of his crown, in the character of the source of conservative justice. When the ordinary Folkmoots failed to relieve the suitor, he was to have recourse to the king. The letter of this law directs—and the direction was perhaps given for the king's ease and convenience—that the default of the inferior tribunal should be strictly proved. No one was to trouble the sovereign, until he had been denied right at home. Still, a universal power of inspection and control continued vested in the monarch[b]: and the particular instances which can be collected concerning his prerogative authority, as Supreme Judge of the empire, are such as to shew that, in the latter periods at least, any case or cause of importance could be brought before the king. Whether any rule of law guided or restrained the applications of the suitor, it is difficult to decide. Sometimes a hearing before the king appears to have been demanded as a right; sometimes solicited as a favour. The fear of the influence exercised by a powerful adversary is often alleged as the ostensible cause for seeking a trial in the royal court: but the hope of obtaining a favourable judge may have often been as forcible an inducement for soliciting the interposition of the crown.

Resort to be made to the King in person, when right could not be obtained in the inferior jurisdictions: being the remedial jurisdiction afterwards exercised by the King in Parliament, and from whence Courts of Equity were ultimately derived.

Supreme remedial authority vested in the King's person, and *not* shared by the Witan.

The authority thus exerted was inherent in the king's person: nor was it shared with any other judge, council, or tribunal. This fact appears by the commendations bestowed upon those monarchs who excelled in vigilance and justice. It is not the Witan who obtain the encomium, but the king. Farther proof is afforded by the disclosures, more sincere than edifying, of the gifts which assisted in obtaining the monarch's decree. The

[a] It is to these judicial circuits that the Monk of Ramsey alludes; cum quadam vice, Rex *Cnuto* more assueto, regni fines peragraret, &c., Hist. Ramesiensis, p. 441. [When at a certain time, King *Canute* was travelling through the territories of his kingdom, as was his custom.]

[b] This appears from the account of Edgar's circuits, and the earlier example of Alfred. (Asser, p. 70.)

precious ore was cast into the scales of justice, even when held by the most conscientious of our Anglo-Saxon kings. A single case will exemplify the practices which prevailed. Alfric, the heir of "Aylwin the black," seeks to set aside the death-bed bequest, by which his kinsman bestowed four rich and fertile manors upon St. Benedict. Alfric, the claimant, was supported by extensive and powerful connexions; and Abbot Alfwine, the defendant, was well aware that there would be *danger* in the discussion of the dispute in public, or before the Folkmoot; or, in other words, that the Thanes of the Shire would do their best to give a judgment in favour of their compeer. The plea being removed into the royal court, the abbot acted with that prudence which so often calls forth the praises of the monastic scribe. He gladly emptied twenty marks of gold into the sleeve of the Confessor, and five marks of gold presented to Editha, his wife, encouraged her to aid the bishop, and to exercise her gentle influence in his favour. Alfric, with equal wisdom, withdrew from prosecuting the hopeless cause in which his opponent might possess an advocate in the royal judge, and a friend in the king's consort. Both parties, therefore, found it desirable to come to an agreement: and the "Landboc," testifying the compromise, was deposited in the Treasury, in the custody of Hugoline the Chamberlain, to the end that the *final concord* might receive a perpetual testimony in after times[a].

Judicial gifts, money paid to Edward the Confessor and Queen Edith, by the suitor.

"Landboc" containing the compromise of the suit (equivalent to the *chirograph* or *final concord*) deposited in the Treasury under the care of Hugoline, the Chamberlain. (See above, p. 117, &c. and II., p. 680.)

This judicial power, whether lawfully exercised or unlawfully abused, must have given great influence to a vigorous and able monarch; greater still, to the ministers of a weak one. And, towards the close of the Anglo-Saxon empire, the prerogative both of the king and the king's advisers received a further increase from one of those circumstances, apparently trivial, but which are destined to be the means of producing the most important changes in human affairs. Sweeping innovations always excite attention, and often provoke resistance: small alterations steal upon us imperceptibly, and continue increasing, until they acquire a strength which cannot be put down. Edward the Confessor, imitating the kings of the Franks, had introduced the practice of testifying his assent by means of a great pendant seal[b]. Although the seal was not absolutely essential for the validity of a charter, still the effigy of the king sitting upon his

Effects resulting from the

[a] Hist. Ramesiensis, pp. 457 and 458.

[b] See Part II., *Proofs and Illustrations*, p. 296.

Part I. Ch. XXI.

throne, added considerably to the importance of the document. The Landboc was valid and effectual when merely signed with the cross: but the further corroboration of the "*Sigillum Eaduuardi Anglorum Basilei*,"[a] was now considered as an indication of his special good will, and to be obtained only after long solicitation, and by favour of the king[b]. Most of the different "*Gewrits*" to which the seal was appended, resulted from the king's special grace and mere motion. It will be recollected that, by such instruments, the king bestowed his favour, or imparted his "peace" or protection. A "*Gewrit*" was issued when the sovereign delegated his authority to the judges, appointed for the purpose of representing him on the hearing of a cause. The powerful offender who had refused to obey the citations of the prelate, was compelled to appear by virtue of this prerogative process[c]. For all such mandates, the applicant was compelled to petition, or to make humble request. They were granted at the will of the sovereign. We have seen how the prayer of the suitor was supported. Gifts were tendered to the Royal Majesty: the Writ was acquired by the liberality of the plaintiff: and the Clerks of the Chapel who engrossed the Precept, can scarcely have escaped the considerate bounty of the petitioner. Their office was merely ministerial: no authority had yet been delegated to them by the king; but the suitor might find that the quill did not glide smoothly over the vellum which contained an ungrateful name, and the wax would melt more readily to oblige a friend. The Chaplains also were shrewd and learned clerks. They could not make the grant: but their advice might influence the king's irresponsible discretion. When they followed the king into the Witenagemot, increasing deference would be paid to their discretion and wisdom; and the Bench of the "Clerks of the Chapel" or "Chancery," may be considered as engrafted upon the Great Council of the Empire.

employment of the Great Seal (see II., p. 296). Influence obtained by the Clerks of the Chapel (see above, pp. 117, 143–146 and II., p. 672).

In the general outline of the Anglo-Saxon government, we may discern many features possessed by the Anglo-Norman administration. Abuses, ascribed solely to William and his Norman successors, had their origin, at least, in native policy: the precedent was English, however much it may have been

Features of the Anglo-Norman administration discernible before the Conquest. Fines upon original writs.

[a] See Part II., *Proofs and Illustrations*, p. 297; a faithful representation of one side of this seal may now be found in my History of England [vol. v. of this series].

[b] Hist. Ramesiensis, p. 453. [c] Hist. Ramesiensis, p. 440.

improved by the rapacious ingenuity of the invaders. Thus, the gift humbly presented to the sovereign, for the purpose of obtaining a trial before him or in his court, differed not in principle from the *fines* afterwards paid into King John's Exchequer as the purchase of the original writ. In the *compliment* to Queen Editha, we find the origin of the "*Aurum Reginæ*"; and the successors of Hugoline, the Bower-Thane or Chamberlain, still continued to keep the Chirographs, testifying the concord between the litigant parties before the king's tribunal. Justice, or injustice, continued to be dispensed by the king according to the Anglo-Saxon principles, which assumed that he was the supreme and uncontrolled expounder of the law[a].

Aurum Reginæ. Custody of records in the Treasury of the Exchequer.

During the earlier years of the Conqueror's reign, it is difficult to point out any change in the constitution of the Legislature. Anglo-Saxon Earls, the sons of Algar and Siward, sat in the great Council of the Realm by the side of the Norman Comites: and, seen at this distance, the assembly convened by William does not appear to differ in any material point from the Witenagemot of his "good cousin," whose realm he had acquired. We are still in the Anglo-Saxon age, when we are told that Henry Beauclerk sent his "*Gewrits*" over all England, and summoned his Bishops, and his Abbots, and his Thanes to the *Witenagemot*[b]. The "Law of Edward the Confessor," though *amended* by the Conqueror, had been restored to the English by this monarch[c]. Espoused to the daughter of Cerdic, "of the right royal line of

Great Council of William the Conqueror, in the earlier years of his reign, not differing materially from the Witenagemot of the Saxon Kings (see charters, in which Edwin, Morcar and Waltheof, appear as members of such council, see II., p. 673).

1123. Witenagemot held at Gloucester by Hen. I. Bishops, Abbots, and Thanes summoned by the King's writ.

[a] The best exposition of the course of Anglo-Norman legal proceedings, will be found in the narration of the suit of Richard de Anesty, and in the various proceedings relating to the Battle Abbey suits and the Battle Abbey charters. (Part II., *Proofs and Illustrations*, pp. 30–119.)

[b] 1123. Then soon after did the King send his writs over all England, and summoned all his Bishops, and his Abbots, and his Thanes, that they should come to his Witenagemot at Gloucester, on Candlemas-day, to meet him, and they did so.

Þa sone þær æfter sende se kyng hise *write* ofer eall Engla-lande, and bed hise biscopes, and hise abbates, and hise þeignes ealle, þet hi scoldon cumen to his gewitenemot on Candelmesse deig to Gleawceastre him togeanes, and hi swa diden, Sax. Chron. p. 344.

[c] Lagam Regis Eadwardi vobis reddo, cum illis emendationibus quibus pater meus eam emendavit, consilio Baronum suorum. [The law of King Edward I restore to you, with those amendments, with which my father amended it by the advice of his Barons.]

Part I. Ch. XXI.

England," the Normans who conspired against the king's authority, expressed their scorn by the English names which they applied to Henry and his consort: and the contempt which they felt towards "*Godric*" and "*Godiva*"[a] may be considered as testifying how closely the king adhered to the customs and usages of the Anglo-Saxon nation, bowed down, but not crushed, beneath the yoke of their invaders.

Hen. I. Anglo-Saxon *nicknames* given to him and his consort *Maud* or *Edith* (see above, p. 530) by the Normans.

We attribute over-much to the Norman Conquest. The subjugation of the English race affords an easy and plausible mode of accounting for the vast difference between the state and government of England under the Plantagenets, and the institutions of an earlier age. But the simplest theory is not always the truest: and, notwithstanding the ascendancy of the Normans, the usages and customs of Anglo-Saxon England were retained with much greater pertinacity than in those countries where no foreign ruler attained the throne. When William won the crown of England, Gaul and Germany had already forgotten the Salic and the Ripuarian laws. Scarcely had the Capets established themselves on the throne, when all the Barbaric Codes of the Carlovingian Empire seem to pass away. The legislation of Charlemagne was forgotten in the glories of the Twelve Peers. And, whilst the fabulous enterprises of the Hero of Chivalry were sung by the minstrel in hall and bower, the venerable volumes of the capitularies, cast away by the Jurist, sank into that repose from which they were not to be awakened, until their pages became the toilsome study of the mere antiquary.

Anglo-Saxon institutions and laws, retained in England after the Conquest to a much greater extent than in the institutions and laws of the parallel periods on the continent, where the earlier jurisprudence and policy rapidly passed away, although no foreign conquest had taken place (see above, pp. 41 and 43).

The changes in English policy were effected principally by the slow operation of internal causes; by usages which modified the statute; by the common assent which altered or revoked the law; and by the silent establishment of new forms and proceedings, creating new channels for the administration of the government. The most important principle of the English Constitution, which, without asserting in direct terms that the sovereign is responsible to the nation, does virtually place him in subordination to the law, may be traced as it began to be developed in the Anglo-Saxon empire. In the earlier ages of Anglo-Saxon history we may

[a] These *nicknames* were given to Henry and his Queen by the Norman Barons. (Will. Malm., lib. v. p. 88.) *Godiva* seems to be *Godwife* or *Goody*. It is possible that the name of *Matilda* was given to *Edith* after her coronation, in order to conciliate the Normans. *Godric* may perhaps have been a colloquial name for an Anglo-Saxon.

observe various instances of sovereigns deposed for the real or alleged abuse of their authority. Sigebert, the tyrannical king of Wessex, thus resigned his crown pursuant to the compulsory decree of the "Proceres" and people, and accepted a dependent principality. And the usurping Beornred was dethroned by the unanimous voice of the Mercians, to make way for the magnanimous Offa[a]. Neither of these cases can, however, be considered as constitutional precedents. The first, a successful effort to displace an oppressive monarch, may find a parallel in every age and country. The second, the restoration of the right royal line, is rather an argument against a deposing power; and it is difficult to admit that they afford a clear proof of any authority, grounded upon the theory of a constitutional compact between the nation and the king.

No theory of any compact between the Sovereign and his people existing in the early periods of Anglo-Saxon history.

This idea, so new to the world, and so influential, can only be deduced from those, who, when they rendered the coronation of the monarch a religious ceremony, attempted to teach the sovereign, that, for the due performance of his duties towards his people, the mortal king continued accountable to Him who rules the universe. If the "Basileus" was honoured as the anointed of the Lord, and in some measure revered as reigning by the peculiar help and favour of Providence, the very sanctity ascribed to his person increased his moral responsibility. Flattery might pervert these titles, and the sovereign might thereby be exalted in his own conceit; yet, if truly read, they contained the deepest lesson of humility.

The idea of such a compact, the result of the introduction of the ceremony of royal consecration. Theory of the moral responsibility of the Sovereign taught by the clergy.

The royal inauguration, according to the ceremonial sanctioned by the Western Church, was considered as a sacerdotal ordination. The king, the Chief of the State, became a member of the ecclesiastical hierarchy. Hence, when the sacramental cup was withheld from the laity, the king of France, as a servant of the altar, still received the communion in both kinds. And the mystic rites of consecration were sought by the sovereign, who deemed that they afforded the best protection against the rude hand of unlawful violence[b]. The prelates chanted the coronation ritual dictated by the clergy; and the sovereign received his diadem from priestly hands: yet if the priesthood took upon themselves thus to act, in conferring the dignity, they

A species of sacerdotal order conferred upon the King by the rites of coronation. Intent of the ceremony introduced by the clergy.

[a] Part II., *Proofs and Illustrations*, pp. 484, 485.

[b] As by Magnus of Norway, the first crowned and anointed monarch of the North. (Guil. Neub., p. 270.)

Part I. Ch. XXI.

demanded from the sovereign the most solemn engagement for the due performance of the trust which he undertook to perform.

Raised to the supreme dignity of his tribe, the pagan chieftain was lifted up upon the shield, or he ascended the rocky fragment, or the mound; and the bard repeated his genealogy, and extolled the deeds of his ancestors; from them he derived his right. No oath was imposed, no compact formed. The head of the kindred, he stood unchecked and unchallenged amidst the tribe. But the Christian monarch, the anointed sovereign, was rendered accountable for his duty to those over whom he ruled.

Anglo-Saxon coronation oath and royal consecration (see II., p. 669).

Three were the promises exacted by the people from the Basileus of Britain: that he would always preserve true peace, forbid rapacity and injury, and in all his judgments command equity and mercy. Such an oath was taken by Ethelred. Let us consider the result of his reign. He is accused, perhaps justly, of imbecility and of tyranny. The affections of his subjects were alienated—he was guilty in their eyes—their support lost, and Ethelred was compelled to abandon his crown to the Danish invader. Canute, the son of Sweyne, was called to the succession by his followers. But experience had been acquired by the English, and the "Witan"—the Optimates, Clergy, and Laity—now discovered that no king could be so dear to them as their own "*gecynde Hlaford*"—their own natural sovereign—*provided he would govern them more justly, and treat them more equitably than he had hitherto done.* The address, for thus we may term the declaration of the national legislature, was transmitted to Ethelred, then an exile in Normandy. In answer, he despatched the Atheling Edward, accompanied by his ambassadors. Ethelred greeted his lieges well, and promised to be good lord to them. All those things would he amend which were disliked by them; and all that had been said or done against him, he would pardon, provided *they would submit to him loyally and without deceit*: and, pursuant to this compact, Ethelred was restored to the Crown[a].

1014. Ethelred restored, upon his entering into a new compact with the nation; promises to amend his course of government, to grant a general amnesty, &c. (See II., pp. 411, 412.)

This was a most memorable proceeding. The address of the Witan amounted to a complete recognition of the right of the House of Cerdic: but at the same time it involved an equally clear and distinct assertion, that the Legislature could impose limitations upon the wearer of the crown. Ethelred was their legitimate king; but, inasmuch as he was made by the law, he

[a] Part II., *Proofs and Illustrations*, p. 412.

must govern by the law; and the English were entitled to demand security for the due administration of the royal authority. Ethelred assented to the claim, he complied with the wishes of his people, and promised to grant a general amnesty. But this very promise implied that he asserted the theory of an indefeasible right, and that he might be remitted to the full exercise of his power, if his subjects should violate their duty, or fail in the observance of their engagements towards their sovereign.

Such compact the result of a compromise between the doctrines of hereditary right and royal responsibility.

This mutual covenant gave sanction to the principle, that the king and his people were bound together by law. The right to the throne is not derived from the people; but the people are entitled to demand security for their privileges from the sovereign. Haughty as the port of the king or his ministers might be, this doctrine was never entirely forgotten. When the Anglo-Saxon sceptre had passed into the hands of the Norman line, and the memory of the ancient constitution was hallowed by time, the "law" of the last legitimate Anglo-Saxon king appeared as the people's protection against arbitrary power. Edward was viewed as a sovereign whose empire was founded upon justice. The name of the Confessor was echoed from reign to reign, and the Anglo-Saxon liberties were transmitted from charter to charter, until at last the constitution settled into that form, which, whatever may be its defects, bestows upon the sovereign the least power of abuse, and the greatest share of beneficial authority.

EDITOR'S NOTES

The dates enclosed in brackets placed after names are those of birth and death, but if r. precedes they indicate the duration of the reign of a king or emperor. When the period of the tenure of office of a pope, bishop etc. is given, the title is inserted within the brackets. d. = died, r. = reigned, *c.* = circa. *E.g.*

Savigny, Friedrich Karl (1779–1861).
Witichind (d. *c.* 973).
Hlothhære (r. 673–685).
Caracalla. Marcus Aurelius Antoninus Bassianus, Emperor of Rome (r. 211–217 A.D.).
Egbert (Archbishop of York, 734–766).

p. iv. 1. *Savigny, Friedrich Karl* (1779–1861). Professor of Roman Law at Berlin and a pioneer in the historical method of investigation. He published his *History of Roman Law in the Middle Ages* at intervals between 1815 and 1831.

— 2. *Allen, John* (1771–1843). Warden and later Master of Dulwich College. He was the author of various articles on history and politics in the *Edinburgh Review*, *The Encyclopædia Britannica* and the *Annual Register*. His *Inquiry into the Rise and Progress of the Royal Prerogative* was published in 1830.

— 3. *Dubos, Jean-Baptiste* (1670–1742). A pensioned agent of the Regent Orleans, who employed his leisure in historical and literary studies. He became a member and was later perpetual secretary of the French Academy. In 1734, appeared the work referred to by the author, in which he maintained that the Franks did not enter Gaul as conquerors, but at the invitation of the Provincials, who recognized their own unfitness for self-government. This view was refuted by Montesquieu at the end of Book xxx of his *L'Esprit des Lois*, but Voltaire shared the author's favourable opinion of Dubos.

— 4. *Montesquieu.* See *N. and E.* vol. I, p. 442, note 8 to p. 14.

p. **3**. 1. *Upsala.* The ancient capital of the Swedes. *Toledo* was the capital of the Visigothic kingdom of Spain, whose people were akin to the inhabitants of South Sweden.

p. **4**. 1. *Gloomy Gothic hall.* Westminster Hall, where the mediæval Councils and Parliaments were often held, and where State trials took place. It was originally built by Rufus, but was altered by Richard II in 1395–1399.

p. **6**. 1. The "*enlightened Statesman*" is Sir Robert Peel. When Home Secretary in Lord Liverpool's Ministry, he made a famous speech in the House of Commons on March 9, 1826, setting forth the principles on which he based the five great Acts reforming the Criminal Law and abolishing the death-penalty for offences against property. Peel was a disciple of Sir Samuel Romilly and more immediately of Mackintosh.

p. **8**. 1. *Caucasian continent.* Europe, peopled mainly by the Caucasian race.

— 2. *Edda.* The Eddas are the old Icelandic Romances of the Early Kings and Heroes. The name Edda is that of the great-grandmother mentioned in one of the stories. Prof. York Powell [in the *Corpus Poeticum Boreale*] says that in their present form they do not date earlier than 800–1100 A.D., and that, being transmitted orally, they were taken down in writing in the 13th century. There are two Eddas. The Older or Poetic Edda dates from *circ.* 1200

and is a collection of old Norse poems on mythological and traditional subjects. The Younger or Prose Edda of Snorri Sturlason dates from about 1230 A.D. and is a miscellaneous handbook dealing with Icelandic Poetry.

p. **8**. 3. *Saxnote* [Seaxneat]. The god and perhaps the eponymous hero of the Saxons. In the genealogical table prefixed to Florence of Worcester, he is son of Woden and ancestor of the Kings of Essex. Hodgkin [*Italy and her Invaders*, vol. VII, p. 108] quotes the "Abrenuntiatio Diaboli" as "renounce the Devil and all his works, with Thunar, Woden, Saxnote, and all their company." It occurs in the curious catechism appended to the account of the Concilium Liftinense (Lestines in Hainault) held by St. Boniface in 743 A.D., and it is printed in Müllenhoff u. Scherer, *Denkmäler*, vol. I, p. 198. [See Hefele, *Conciliensgeschichte*, vol. III, pp. 491–533; also Part II, *Proofs*, p. 556, and Genealogical Table V in vol. V of this series.]

— 4. *Salic Franks.* The expression is here probably used loosely for the tribes of North-West Germany, among whom Boniface worked.

— 5. *Carloman*, the patron of Boniface, was the elder son of Charles Martel.

— 6. *Wecta, Wægdæg and Wihtlæg* were three sons of Woden from whom were descended respectively the Kings of Kent [*A.S. Chronicle*, 449 A.D.], Deira [*ibid.* 560 A.D.] and Mercia [*ibid.* 626 A.D.]. [See Genealogical Tables II, III, and VI b, in vol. V.]

p. **9**. 1. *Eorlcund men.* The nobles, or *Twelfhynde men* (Twelfhindi), whose wergild was 1,200 shillings, as opposed to the non-noble or *twihynde men* (Twihindi), whose wergild was only 200 shillings. Between the two came a quasi-middle class of *sixhynde* men (Sixhindi), for whom see below, notes 1, 2 to p. 11.

Stubbs translates "hind" by hundred, probably correctly, but Seebohm in his *Tribal Custom in Anglo-Saxon Law*, p. 406, would like to translate "hind" as meaning "hide," in the sense of a family-holding or family-group. Thus the noble would be one who could bring twelve kinsmen representing twelve hides or family-groups to defend him by their oaths against any charge.

[Cf. *Leges Henrici Primi* and Maitland, *Domesday Book and Beyond*, p. 44.]

— 2. *Egbert* (Archbishop of York, 734–766) was the first Archbishop after Paulinus. He was brother of King Eadberht of Northumbria and a correspondent of Bede. [For his *Dialogue* see Thorpe, *Ancient Laws and Institutes*, p. 320.]

p. **10**. 1. *Compurgation.* See ch. VII, pp. 175 ff., ch. VIII, pp. 203 ff., pp. 211 ff. The Compurgators were perhaps at first the kinsmen on whom would fall the blood-feud. Later they became witnesses as to character and not as to fact. [See Part II, *Proofs*, p. 160, and Pollock and Maitland, *Hist. of Eng. Law*, vol. II, p. 600.]

p. **11**. 1, 2. *Sithcund men, Sixhynde men.* This class probably suffered at the Norman Conquest, for the right "to choose one's own lord, and take one's land where one would" was strange to the Norman lawyers. Sithcund man is another form of gesithcund man. The gesiths were the King's thanes, the "comites" or companions in the account given by Tacitus. The thane who was rewarded with bocland by the king tended to take the place of the older "eorl," the noble by birth. [See above, note 1 to p. 9, and Maitland, *Domesday*, pp. 46 ff.] It is suggested that a Sixhynde man would sometimes be a gesithcund man who could ride on horse-back in the service of the king, without possessing the five hides of land which a twelfhynde man must have; sometimes again a landowner with five hides, but a Welshman, and so worth only half an Englishman with five hides. [See Chadwick, *Studies on Anglo-Saxon Institutions*, pp. 87 ff.]

— 3. *Radechnights* otherwise Rademanni, Rodknights and Radechinistres. The lords' riding-men who performed service in return for their lands, mainly in the form of going messages and perhaps as fighting men. They were akin to the drengs of Northumbria. [Cf. Maitland, *Domesday*, pp. 44, 56, 57, 66, 335.]

— 4. *Sokemen.* The *personally* free tenants of the manor, who owed suit and service (hence the name) to the lord, i.e. they held by non-military tenure. [See Maitland, *Domesday Book and Beyond*, p. 196.]

— 5. *Laws of Wihtræd.* Wihtred was King of Kent, 690–725 (Bede, lib. V, c. 23). [For his laws see Thorpe, *Ancient Laws*, pp. 16–19; Liebermann, *Gesetze*, vol. I, pp. 12–14.]

p. **13**. 1. *Bonde, Bunda.* The *N.E.D.* (*s.v.* bond) derives *bond* ultimately from the O.W. Scand. verb *búa* or *bóa*, to dwell, and thus connects the *bonde* with the German *Bauer* or peasant-farmer. Judging by the meaning of analogous words in other Teutonic languages, especially Icelandic, *bonde* only obtained the more contemptuous sense of villein or serf in later years, and is not connected with the verb, to bind.

— 2. *Manens*, from L. *manere*, to remain. The term was applied to a peasant who was compelled by custom to remain on the lord's land. [See Du Cange, *s. v. manens* and cf. *mansio* and *manerium* from the same root.]

— 3. *Gebur.* The word is the same as our "boor" (in Goldsmith's lines, "Where the rude Carinthian boor, Against the houseless stranger shuts the door"), the German *Bauer*, and the Dutch *boer*. Cf. note on *bonde*, above.

— 4. *Cotarii, Cotsætan.* Cottagers who held only a small portion of land, and worked also on the land of others.

— 5. *Bordarii* as a class disappeared from England soon after the Conquest. They were either villeins with less than the usual holding or cottiers with more than the usual holding. [Cf. Maitland, *Domesday*, pp. 23–25, 38–41, 107, 363.]

— 6. *Charter*, etc. See *N. and E.* vol. I, Index, *s.v. Charta Divisionis.*

p. **14**. 1. *Land-agend* is the equivalent of *hlāford* and *landrīca*, and means the proprietor of the land, i.e., the lord of the soil as opposed to his tenant. [Cf. Thorpe, *Ancient Laws*, glossary.]

— 2. *Liti, Lathen, Litones, Lassi.* In the Dooms of Ethelbert of Kent [printed in Thorpe's *Ancient Laws*] we read of the *laet* in Kent, who is neither a freeman nor a slave. Probably he is akin to the *litiete*, etc., of the Continent, but we find no similar class in England till Domesday Book tells us of the *buri, burs*, or *coliberti*, who seem to be bound to the soil and so inferior to the *bordars* and *cottiers* and yet superior to the *servi*. Maitland [*Domesday*, pp. 27, 28] is chary of identifying the *laet* with the *colibertus* but, unlike the author, differentiates him from the *ceorl*. [See also Oman, *England before the Norman Conquest*, pp. 354, 360, 361, and Du Cange, *s.v. Litus.*]

p. **15**. 1. *Vavassours.* The word here corresponds to the mesne-tenants of feudal times who held their land not in chief from the king, but from another baron.

p. **16**. 1. *Agenhine.* Du Cange (*s.v.*) explains this word as "familiaris seu famulus domesticus," household servant, and quotes the Law of the Confessor. *Agen* means own and *hine*, servant.

p. **17**. 1. *Ambacti.* Ambactus is said to be a Gallic word meaning hired servant. [Cf. Du Cange, *s.v.*] The A.S. word is generally *ambeht.*

— 2. *Frisians.* Frisia was approximately modern Holland and the name is perpetuated in Friesland. Cf. below, p. 582, note 2 to p. 33, and Shore, *Origin of the Anglo-Saxon Race*, pp. 66 ff. For the *Leges Frisiorum* see Seebohm, *Tribal Custom in Anglo-Saxon Law*, pp. 194 ff. They are printed in full in Pertz, *Mon. German. Historica.* [See also *Ancient Laws and Constitutions of the Frisons* published in a later volume of this series.]

p. **18**. 1. *Centenary* (Centenarius). (See ch. III, pp. 70–73.) The *Capitularies* were the royal legislative and administrative orders, in this case of Charlemagne. (See ch. XVII, pp. 461–464.)

— 2. *Mundiburd. Mund*, lit. hand, is used here in the sense of *grith*, peace or protection; *byrd* is the abstract noun from *bora*, bearer. Cf. *Mundbyrd, N. and E.* vol. I, p. 291, where the word is used for the guardianship of a widow by the Church. [Cf. Chadwick, *Studies on A.S. Institutions*, p. 115.]

— 3. *Hijo dalgo*, lit. son of somebody. The Spanish expression for a lesser noble or gentleman by birth. Such alone were entitled to be called Don.

p. **19**. 1. *Roturiers.* A French word for those who followed a plebeian occupation, especially tillage. Littré connects it with the Low Latin word *ruptura*, land newly broken up by the plough. [See Du Cange, *s.v. rumpere, rupturarius.*]

— 2. *Old Saxon.* See *N. and E.* vol. I, p. 442, note 3 to p. 17.

— 3. *Witichind*, otherwise Widukind or Witikind (d. *c.* 973). A Benedictine monk of the Abbey of Corbey in Westphalia. He left behind a history in three books entitled *Res gestæ Saxonicæ sive Annales de gestis Othonum* (919–973), but it ended with the death of Otho I.

p. **20**. 1. *Iring, Irmin.* See note on *Irminsule, N. and E.* vol. I, p. 474, note 1 to p. 96. Cf. also Part II, *Proofs*, p. 192, note a.

— 2. *The Saxon Mirror.* See *N. and E.* vol. I, p. 444, note 11 to p. 18.

— 3. *Lithuanian.* See *N. and E.* vol. I, p. 489, note 4 to p. 207.

— 4. *Slavo-Wendic.* See *N. and E.* vol. I, p. 489, note 2 to p. 209.

p. **21**. 1. *Lloegria.* The Celtic name for Britain south-east of the Severn and Humber.

— 2. *Britons entirely extirpated.* German historians, followed more or less closely by Freeman, Green and Stubbs, adopt this view. Seebohm's *English Village Community* (esp. pp. 412 ff.) argues for the survival of an important Romano-Celtic element in Eastern Britain. Coote in *Romans of Britain* attempts to maintain the rather improbable view of the survival of the Roman cities. [See also Vinogradoff, *Villainage in England*, esp. Introductory Chapter summarizing the problem.]

— 3. *The refuge-taking tribe of the people of Galedin* were Belgic tribes, who are said to have migrated to Britain in consequence of an inundation in their own country, perhaps the Netherlands, and to have settled probably in the Isle of Wight and the neighbouring mainland. [Cf. Guest, *Origines Celticæ*, vol. I, pp. 403 ff., vol. II, pp. 19, 20, 202.]

p. **22**. 1. *Wealh . . . by the Saxon Laws.* The reference is to the Laws of Ine, King of Wessex (r. 688–725), printed in Thorpe, *Ancient Laws*, pp. 45–65, and Liebermann, *Gesetze*, vol. I, pp. 88–123. The author's view is supported by the existence of numerous villages called Walton (?Weala-ton) away from the line of Hadrian's Wall. Cf. also the legend of St. Guthlac of Croyland being attacked by devils, whom he at first took for a marauding party of Welsh.

p. **23**. 1. *Gafol.* Tribute or rent paid to a lord for land, sometimes in service. [See Palgrave, *Dictionary of Political Economy*, vol. II.]

— 2. *Manor.* See ch. III, pp. 51 ff.

— 3. *Thirlage.* A term in Scots Law; lands which are thirled or bound to a certain mill entailed upon the possessors the obligation of having their corn ground at that mill only, and a certain quantity of grain—termed the multure in England—generally one-thirteenth, was retained by the miller for his services. The mill-servants also kept a smaller share called sequels. By the Thirlage Act of 1799 the obligation can be commuted and is now all but extinct.

— 4. *Howel the Good* (Hoel Dda). A Welsh ruler of the early tenth century. He witnessed several charters as the vassal of Edward the Elder and Athelstane. He is said to have summoned men from each cantred in his dominions to help him to codify existing customs. [For the Laws of Howel the Good, see Aneurin Owen, *Ancient Laws and Institutes of Wales*, Record Commission, 1841.]

p. **24**. 1. *Dyvnwal Moelmud* (Dunwallo Molmutius). A legendary Welsh Prince and Lawgiver of the pre-Christian Era. Having slain in battle Ymner, King of Lloegria, and having afterwards defeated by a stratagem and killed the Kings of Cambria and Albania who sought to avenge Ymner, he obtained power over the whole island and issued the famous Molmutian Laws. [See Geoffrey of Monmouth, bk. II, ch. 17, and cf. Part II, *Proofs*, p. 189.] His so-called Triads are printed in English and Welsh by Owen in *Ancient Laws and Institutes of Wales.*

p. **28**. 1. *Clydno* (Cloten). See Geoffrey of Monmouth, bk. II, ch. 17.

— 2. *Robertson's View.* William Robertson (1721–1793) prefaced his History of the Reign of the Emperor Charles the Fifth, published in 1769, by "A View of the Progress of Society in Europe." In it he says that "towards the close of the sixth century . . . very faint vestiges of the Roman policy, jurisprudence, arts or literature remained. New forms of government, new laws, new manners, new dresses, new languages and new names of men and countries were everywhere introduced."

p. **29**. 1. *Bards of Strath Clyde.* The reference is to the famous early Celtic poets, such as Taliesin and Llywarch Hên, who flourished in the Cymric Kingdom of Strathclyde in the sixth century.

p. **30**. 1. *Trial by ordeal.* See ch. VII, pp. 176 ff. The ordeal was so open to abuse that, in the Assize of Clarendon, Henry II insisted on the exile of bad characters who had satisfied the test. In 1215 the ordeal was condemned by the Lateran

Council and its place was soon taken in England by the petty jury. [See Pollock and Maitland, *History of English Law*, esp. vol. II, pp. 598, 599.]

p. **30**. 2. *Wihtware*, men of Wight. Cerdic conquered the Isle of Wight and gave it to Stuf and Wiht (or Wihtgar) his kinsmen. [See Part II, *Proofs*, pp. 331, 438, and *A.S. Chronicle* under 530 and 534 A.D.]

p. **32**. 1. *Witichind* or Widukind. See *N. and E.* vol. I, p. 482, note 1 to p. 136.

— 2. *Vassi*. See above, pp. 446 ff.

p. **33**. 1. *Procopius*. A Byzantine historian, born at Cæsarea in Palestine at the end of the fifth century of our era. He wrote an account of the Wars of Belisarius and a treatise on the buildings of Justinian.

— 2. *Wulemar*. The mythical legislator of the Frisians. The Angles, Saxons and Frisians occupied North Germany from the Elbe to the Rhine and were kindred tribes. For the *Leges Frisiorum*, see note 2 to p. 17.

p. **34**. 1. *Nighon sithe yeld*, etc. Said of a tenant who has forfeited his land through failure to pay his rent. He may recover it by paying nine (or eighteen) times his arrears and five pounds as wergild. "Seemingly the proverb means in truth that the tenant will lose the land for good and all." [Pollock and Maitland, *History of English Law*, ed. 2, vol. II, p. 271.]

— 2. *Dog draw*, etc. Of unlicensed hunters in the forest taken with the manner, that is, either with a hound drawing after a beast wounded by the hunter, or at his station ready to shoot or slip a dog, or carrying off a beast, or stained with blood. In such circumstances the forester may arrest the offender. [See Manwood, *Treatise of the Forest Laws*, ed. 4, 1717, p. 193.]

— 3. *Dooms of Ethelbert*. For these see Thorpe, *Ancient Laws*, and Liebermann, *Gesetze*, vol. I, p. 3.

— 4. *Alaric in the Breviarium*. Alaric II, king of the Visigoths, who in 506 A.D. ordered a compilation of Roman Laws to be made, which is especially valuable, because it is the only collection of Roman Laws in which the first five books of the Theodosian Code and the five books of the *Sententiæ Receptæ* of Julius Paulus occur. For a long time also it provided the only copy of the *Institutes* of Gaius. It is also called the Anian Breviary from Anienus the King's Referendary, who was ordered to send certified copies of it throughout the dominions of Alaric II.

— 5. *Theodoric in the Edict*. This Edict was compiled by order of Theodoric, King of the Ostrogoths, between 500 and 515 A.D. He professed to admit the suzerainty of the Emperor and to use his laws for all his subjects, Roman or Goth. The Edict, which was drawn from the writings of Paul the Jurisconsult, the Gregorian, Hermogenian and Theodosian Codes and the Post-Theodosian Novels, was, however, mainly in force for the Romans, as the Goths evidently maintained their own customs in a number of matters.

p. **35**. 1. *Brehon laws* (from *Brethem*, Judge). The name incorrectly given to the Ancient Laws of Ireland. The most important of these legal documents is the *Senchus Mor*, the great old Lawbook. The Laws are a series of minute enactments dealing with everyday life and allow compensation for offences. An imperfect version of the Brehon Laws in six volumes was published by the Brehon Law Commission (1865–1901). The Laws were not administered by paid officials such as sheriffs or police, but depended for their execution merely on public opinion.

— 2. *Ernulphus* or Ernulf (1040–1124), bishop of Rochester, was a pupil of Lanfranc and a friend of Anselm. He was a great authority on the Canon Law, but he is better known by his famous *Textus Roffensis*, a collection of documents relating to the Church of Rochester, English Laws of Ethelbert and others, papal decrees and other materials for English history. It is preserved among the archives of Rochester Cathedral.

p. **36**. 1. *Hlothhære* (r. 673–685) *and Eadric* (r. 685–686). *Wihtræd* (r. 690–725). See Bede, bk. IV, c. 5, 26, and bk. V, c. 23. For their laws see Thorpe, *Ancient Laws*, pp. 11–19, and Liebermann, *Gesetze*, vol. I, p. 9.

— 2. *Berghamstede*. Not the modern Berkhamstead, but Bersted, near Maidstone.

p. **37**. 1. *Court-leet*. See Hearnshaw, *Leet Jurisdiction in England*.

— 2. *Sheriff's tourn*. This was the half-yearly visit the sheriff paid to the various Hundreds not in private hands in his shire, to dispose of the smaller

criminal cases. Although called "The Great Court of the Hundred," the Tourn was really a branch of the Shire Court held by Royal Commission. [See Pollock and Maitland, *Hist. of English Law*, vol. I, p. 515, and Maitland, *Select Pleas in Manorial Courts*, pp. xxviii ff.]

p. **37**. 3. *Apostolical Council of Jerusalem.* See Acts xv, 6.

p. **38**. 1. *Laws of Athelstane . . . Canute.* See Thorpe, *Ancient Laws*, pp. 83–183, and Liebermann, *Gesetze*, vol. I, pp. 146–270.

— 2. *Bretland* means Wales here. Sometimes the name designates Cumbria.

p. **39**. 1. *Halfdane* (d. 911). One of the leaders of the great Danish expedition which invaded England in 866. By 876, he was able to divide Northumbria among his followers. As he refused to be content with that district, Edward the Elder attacked him on one of his raids and slew him and many other Danish chiefs.

p. **40**. 1. *Danish port.* Elsinore. [See *N. and E.* vol. III, p. 197.]

— 2. *Topography and language of the North and East of England.* See articles in *Archaeologia Aeliana*, vol. X, pp. 93 and 173.

p. **41**. 1. *Wapentake.* See ch. III, esp. p. 78.

— 2. *Lahmen* or Lawmen. Hereditary magistrates in the five Danish Boroughs. They are described in Domesday Book as men having sac and soc. It is possible that besides being of thegnly rank and individually holders of the rights of sac and soc, they were also collectively a sort of borough court. [See pp. 91 ff., 105 ff. and ch. XXI, pp. 567 ff., also Maitland, *Domesday*, pp. 88 and 211.]

— 3. *Suio-Goths.* The Goths of Sweden. Cf. the Swedish place-names, Gothland and Gothenburg.

— 4. *Pelayo* (r. 718–737 A.D.). Pelayo was elected King of the Goths by the refugees of the Asturian Mountains.

— 5. *Hermeneric.* Ermanaric (r. c. 350–376 A.D.), one of the Amal Kings of the Ostrogoths, built up a kingdom stretching from the Danube to the Baltic.

— 6. *Athanagild* (r. 554–567 A.D.). A Visigothic king of Spain who surrendered the province of Bætica to Justinian, Emperor at Constantinople, in return for aid against his rival Agila.

p. **44**. 1. *Ingulphus.* See Part II, *Proofs*, p. 120, for the Laws of the Conqueror For *Ingulphus* see *N. and E.* vol. III, p. 292.

p. **50**. 1. *Kien-Long* or Lung. A famous Chinese Emperor (1735–1795), who extended his Empire towards the west at the cost of the nomadic peoples.

— 2. *Catherine.* Catherine II (1729–1796), a princess of Anhalt-Zerbst who became wife of Czar Peter III. She was the friend of Voltaire and the *Encyclopédistes*, and was one of the "enlightened" despots of the 18th century.

— 3. *Gengis* (*Jenghis*) *Khan* (1162–1227). A famous Mongol leader who conquered China. Indirectly he was responsible for the appearance of the Ottoman Turks in Europe.

— 4. *Tamerlane*, the lame Timour (1336–1405), was a chief in Transoxiana whose ancestors had served the son of Gengis Khan. At the age of 33, he made himself King of Samarcand and for the next thirty years raided the surrounding countries. Just before he died, he was planning a campaign against China.

p. **51**. 1. *Manor.* Maitland [*Domesday*, pp. 119 ff.] has made it quite clear that, in the Conqueror's time, manor meant a hall or house at which the Danegeld for a district was collected, or, at all events, the unit for the collection of Danegeld. Thus the lord of the manor would be responsible to the King for his tenants' share of the Danegeld and would stand in a special relation to them.

p. **52**. 1. *Landrica.* A landlord—probably in the sense of sole owner of the soil, as opposed to the *hlāford* with whom the inferior's connection might be purely personal. [Cf. the Spanish use of *rico hombre* for a great landowner.]

— 2. *Benefice*, from Low Latin *beneficium*, a gift or kindness. (See ch. X, p. 295, ch. XVII, pp. 420 ff.)

— 3. *Præstarium*, from Low Latin *præstare*, to provide for use. Du Cange (*s.v.*) points out that it implies a possible return of the object to the giver and is therefore only a sort of loan.

— 4. *Feud*, a fief, an estate held subject to military service and other incidents. In practice, though not originally in theory, the heir succeeded his "ancestor" on paying a fine or relief. (See ch. XVII, pp. 420 ff., esp. pp. 436 ff., ch. XIX.) [Cf. Maitland, *Domesday*, p. 152; Pollock and Maitland, *Hist. of English Law*,

vol. I, pp. 234 ff.] The author (Part II, *Proofs*, p. 287) derives the word from *emphyteusis*, a Roman legal term; it is generally now taken to come from the Teutonic root represented in German by *Vieh*, cattle, the earliest form of loan or reward, but its etymology is uncertain.

p. **52**. 5. *Læn*, A.S. *lān*, loan. (See p. 422, note b, and Part II, *Proofs*, pp. 282 ff., for a fuller discussion of the matter.)

p. **53**. 1. *Folkright*, "common law, public right, the understood compact by which every freeman enjoys his rights as a freeman." [Bosworth-Toller, *Anglo-Saxon Dictionary*.]

— 2. *Tyddin*, etc. *Tyddin*, homestead. *Rhandir*, share-land, sometimes equivalent to *trev*. *Gavell*, a holding of land, being a subdivision of a *wele*. [See Seebohm, *Tribal System in Wales*, and Lewis, H., *Ancient Law of Wales*.]

— 3. *Commot*. "This is a great seigniory or lordship and may include one or divers manors," according to Coke on Littleton. [Quoted in *N.E.D. s.v.*]

p. **60**. 1. *Roderick*. Rhodri Mawr, or the Great (d. 877 A.D.). A Welsh prince of the ninth century who ruled over a large portion of Wales and drove back the Danes and Saxons. However on his death in battle, his domains were divided among his three sons, one of whom, Cadell, was father of Howel (Hoel) the Good.

p. **61**. 1. *Theel Lands. Erb Theel*. Theel is the same word as the German *Theil*, a share, *theilen*, to divide. [See *Ancient Laws and Constitutions of the Frisons*, printed in a later volume of this series; also Shore, *Origin of the Anglo-Saxon Race*, p. 148, and Elton, *Origins of English History*, p. 196.]

p. **63**. 1. *Diceneus*. The traditional law-giver of the Goths.

p. **64**. 1. *Recent devastation of Sutherland*. The reference is to the displacement of the crofters by the first Duke of Sutherland, in whose opinion there were far more of these peasant farmers than the land could support. Between 1811 and 1820 when he was Marquis of Stafford, 15,000 peasants were compelled to leave their holdings in the interior of the shire and settle along the coast. The Duke maintained that he was really acting in the interests of the peasants, for he reduced rents, reclaimed waste lands and made roads and bridges; moreover he did his best to abolish the "tacksmen" or middlemen, so that the peasants might hold directly from the Duke. However the scheme was unpopular and certainly involved considerable hardship.

— 2. *Sac and Soc*. A good account of the origin and meaning of this phrase is to be found in Maitland's *Domesday*, pp. 258–290. [See also Pollock and Maitland, *Hist. of Eng. Law*, vol. I, pp. 578 ff.]

— 3. *Gerefa*. For this word see Kemble, *Saxons in England*, vol. II, pp. 151–181. Cargraves are still appointed in parts of North Lincolnshire. According to the *New English Dictionary* there is no connection between *gerefa* and the continental *graf* or *gravio*; nor is it to be derived from *gefera*; its etymology is unknown.

p. **66**. 1. *Folkmoot*. This was the meeting of the freemen of the kingdom or folk, where matters of common interest were transacted and justice done. When England became one kingdom, the folkmoots sank into shiremoots or county courts.

— 2. *Villa*, now generally called a vill (hence villein). It was a village community, as far as possible self-contained.

— 3. *Mallum*. See p. 462, and Part II, *Proofs*, p. 800.

— 4. *Gravio*, later *graf*, count. He came to be merely the deputy of the superior lord, although he later regained a considerable amount of independence.

— 5. *Tunginus* is described in an old glossary as the judge next in authority to the count.

p. **67**. 1. *Township . . . might arise from the acquisition of a British Maenawl by an Anglo-Saxon Chieftain*. It is interesting to find the author anticipating what is substantially the view of Vinogradoff. [See Vinogradoff, *Growth of the Manor*, p. 40.]

p. **68**. 1. *Cacique*. The title of the Indian village chief in America. Locke proposed to use it as the title of an American nobility in his fanciful Carolina Constitution. The author is referring to the villages on the large estates in Mexico where the peons or natives lived in a state of serfdom.

— 2. *Primates*. The Christian representatives of the various Greek speaking

districts, especially in the Morea, who formed the Council of the local pasha or bey. In theory they only helped to assess the taxes for their own district, but in practice they became a sort of aristocracy who as tax-farmers oppressed their co-religionists, but they redeemed their offence to a large extent by acting as local leaders in the Greek War of Independence.

p. **68**. 3. *Papas* or popes. The village priests (lit. fathers). Mahommed II had made the Patriarch at Constantinople national ruler of the Orthodox Church, and the Christians, who had no rights in the Mahommedan Courts, used the bishops and clergy as arbitrators in their disputes and later as leaders in war. [See Fyffe, *Modern Europe*, pp. 525 ff.]

p. **69**. 1. *Comites.* See Müllenhoff, *Deutsche Altertumskunde*, vol. IV, p. 253.

p. **70**. 1. *Gauding.* For the termination cf. *Husting*, and *Landzthing*, and *Hærredzthing.*

p. **71**. 1. *Scabini.* The English aldermen or jurats. [Cf. the *Keuren* of Lille, *N. and E.* vol. III, p. 141.] They correspond somewhat to the Gothic *Næmda.*

p. **73**. 1. *Hærred.* O. W. Scand. *herað*, Norw. *herred*, district; by its derivation meaning command of an army, then the region over which a chieftain rules.

p. **74**. 1. *Toft.* The dwelling house and the land immediately around it, sometimes later walled in for a garden, as opposed to the croft, which was an enclosure, either pasture or arable, detached from the dwelling house.

p. **76**. 1. *Agrimensor.* The official surveyor who measured out the forfeited land (ager publicus), upon which colonies were planted among conquered peoples.

— 2. *Næmda.* These were twelve elected officials corresponding somewhat to the *scabini* or *échevins* of Western Europe, and were analogous to the "twelve senior thanes" of Ethelred II's law. There were two different kinds of *næmda*; one managed the land of the community and the other acted as suitors at the *Hærredzthing* or court of the *Hærred.* (See pp. 96 and 100, and Part II, *Proofs*, p. 272.)

— 3. *Allodial* means held by freemen by hereditary right and not by feudal tenure. The Udallers of Orkney, descendants of the old Norse colonists, were examples of this tenure. Stubbs, *Constit. Hist.* vol. I, p. 207, speaks of "a progress from allodialism to feudalism," and Stephen, *Laws of England*, vol. I, p. 174, defines the allodialist as one who held of no one, but enjoyed his land as a free and independent property. [See *N.E.D. s.v.*, allodium.]

p. **77**. 1. *Shedding* (sheading), a parting, division: A.S. *scēadan*, to separate. The six sheddings are Glenfaba, Middle, Rushen, Garff, Ayre and Michael, each with an officer called a coroner whose duties are similar to those of a sheriff.

p. **80**. 1. *Devonian Compact* (cf. Part II, *Proofs*, p. 330). It is now held that the reading "Deunsetan," in Lambarde's version of the Ordinance referred to, is a clerical or typographical error, as elsewhere Lambarde writes "Dunsetan" and all the MSS. have the reading Dunsetan, i.e., the mountain dwellers. Thorpe, *Ancient Laws*, p. 150 note, suggests that the context proves that the river is the Wye, which Athelstane established as the boundary [see Will. Malm. *de Gestis Regum*, lib. II, c. 6] and not the Exe, as the author suggests. (Part II, *Proofs*, p. 447.)

p. **82**. 1. *Anglo-Saxon boroughs . . . as hundreds.* Maitland, *Domesday*, p. 209, says, "Probably it (i.e. the borough court) was, at least as a general rule, co-ordinate with a hundred court and indeed at starting the borough seems to be regarded as a vill which is also a hundred." Maitland further suggests (p. 210 note) that "the moot held in the borough had perhaps a jurisdiction over a territory considerably larger than the walled space." In this case it is possible that it was the encroachments of the sheriff and private lords that had forced the borough hundred to concentrate within its walls and the desire for security led to the struggle of the burgesses to be free from the shire court. Miss Mary Bateson, *Medieval England*, pp. 124 ff., maintains that it is the characteristic of a borough that its burgesses had not to appear before the courts of the Shire or Hundred.

p. **84**. 1. *Pelasgic.* The Pelasgians were the pre-Hellenic inhabitants of Hellas.

— 2. *Amphictyonic League* (*Amphictyones*, lit. dwellers around). The reference is probably to the League of the Delphic Apollo, composed originally of the twelve tribes who dwelt round Pylæ (Thermopylæ), in honour of Demeter.

p. **85**. 1. *Pylagoras*, lit. one sent as a deputy or orator to Pylæ. The meeting of the Amphictyonic Council really took place at Anthela near Pylæ.

— 2. *Pan-Ionian Synod.* A meeting of "all the Ionians" at the common Temple (Panionion) on Mount Mycale in Asia Minor. The Twelve Ionic Cities at an early date joined this League, but it never developed a political side and the cities fell under the control of Persia.

— 3. *Androclus*, according to legend was the son of Codrus, King of Athens, who in the 11th century B.C. led a mixed body of Ionians and allies to colonize Ephesus. Probably the foundation of Ephesus was later than this date.

p. **86**. 1. *Milesian antiquity.* A reference to the legend that Ireland was originally colonized by Milesians from Spain. The Milesians were the eight sons of Miled (Milesius) whose mythical ancestors reach back to Noah; they wandered at various times in Scythia, Egypt and Crete and finally reached Spain.

p. **87**. 1. *Tectosages, Trocmi, Tolistobogii.* Three Celtic tribes originally settled in the South of France, the first named around Toulouse. Part at least followed Brennus over the Alps and burst into Macedonia and Thrace, 280 B.C.; after wholesale ravaging they settled down in Galatia around Ancyra, Taurium and Pessinus.

— 2. *Brennus*, lit. king, probably a title and not a proper name. The leader here referred to, after raiding Macedonia and Thrace in 280 B.C. at the head of the Tectosages, etc. attempted to plunder Delphi after turning the Greek position at Thermopylæ. However he was driven off wounded and in despair committed suicide.

p. **88**. 1. *Galatians familiarly acquainted with the Greek tongue.* Lightfoot in his commentary on the Epistle to the Galatians adopts the view that the Epistle was addressed to the Celtic people of Galatia. However the researches of Prof. Ramsay have made it clear that the Epistle of St. Paul was really addressed to the inhabitants of such cities as Pisidian Antioch, Iconium, Derbe and Lystra, which were in the Southern portion of the Roman Province of Galatia. St. Paul certainly visited these cities on his First Missionary Journey [Acts xiii, xiv], but we do not know that he ever travelled in North Galatia. [See Ramsay, *St. Paul the Traveller.*]

— 2. *Hercynian Forest.* This was a forest in ancient Germany, sixty days' journey in length and nine in width, extending along the right bank of the Rhine from the Black Forest to the Harz Mountains. [See Caesar, *de Bello Gallico*, lib. vi, c. 24.]

p. **89**. 1. *Marcomanni.* A Suevic tribe who fought with the Quadi against Marcus Aurelius (see below). The name means Men of the Mark or Border.

— 2. *Quadi.* A German tribe in the district now called Moravia. They were defeated by Marcus Aurelius, 174 A.D.

p. **91**. 1. *Reeffsting.* Cf. *Landzthing, Hærredzthing*, etc. It was a Court of Final Appeal to decide matters that had not been definitely settled elsewhere. Cf. the Appellate jurisdiction of the House of Lords.

p. **92**. 1. *King Bergher* (Birger) of Sweden (r. 1290–1321) was son of King Magnus Ladulas. As he was only nine years old at his succession, his guardian, Thorkel, Canute's son, ruled in his name till 1299. Under Thorkel the old Law of Upland was revised and amended in 1295 by the Justice (Lagman) of Tiundaland, Birger Pederson of Finsta, with the aid of twelve Assessors from all the three Folklands. [See Geijer, *Hist. of Sweden*, p. 54, and article by the author on "The Ancient Laws of the Scandinavians," published in a later volume of this series.]

p. **93**. 1. *Godord* (*goðord*), lit. parish or temple-district. As each Norse Chief settled in a district of uninhabited Iceland, he built a temple and he himself became at once chief and priest (*goði*) of the district. About 930 A.D., the various goðords were persuaded by Ulfijot to federate and form the Althingi or Central Parliament for Iceland. Thirty years later, Thord Gellin organized the island into a hierarchy of goðords, fierdings and thing. (Cf. account of Icelandic Courts, Part II, *Proofs*, p. 272.)

— 2. *Fierding* (*fjórðungr*), lit. fourth part or quarter. Cf. Yorkshire, Riding or third part (originally thriding or thirding.)

p. **93**. 3. *Lögrétta, rétta lög.* To lay down the law correctly, to amend the law: the legislative assembly of the Icelandic Commonwealth.

p. **94**. 1. *Hwiccas.* The Bishop of Worcester was originally styled "episcopus Huicciorum" and his diocese extended over South Warwickshire, Worcester, Gloucester and around Bath. According to the A.S. Chronicle, the district was conquered about 577 A.D., but, after the British victory over Ceawlin at Faddiley in 584, the two races seem to have amalgamated under subreguli, dependent on the Mercian Kings. The name Hwiccas is said to survive in Wychwood (Oxfordshire) and Whichford (Warwickshire). (See Part II, *Proofs*, pp. 512 ff.)

— 2. *Winchelcombshire.* The district around Winchcomb in North Gloucestershire between Cheltenham and Evesham. For similar "shires" cf. Bedlingtonshire, Norhamshire and Islandshire in Northumberland. These were the lands of St. Cuthbert and so did not come under the Sheriff's direct control. Hallamshire in South Yorkshire is a similar case.

p. **98**. 1. *Barmoot.* The name of a Court held in the lead-mining districts of Derbyshire, to settle disputes among miners and to determine trade customs. Its origin is doubtful, but it certainly goes back to Edward the First's time. The Court has jurisdiction in seven clearly defined districts, some of which are Duchy of Lancaster lands, and others private estates. Much of its procedure is now obsolete, and the powers of the Courts have been regulated by the High Peak Mining Customs and Mineral Courts Act of 1851. Warkesworth is Wirksworth in Derbyshire.

— 2. *Stannary Parliament.* [*Stannum*, tin.] The Jurisdiction of the Stannaries is immemorial, and the earliest charter, that of Edmund, Earl of Cornwall, cousin of Edward I, merely confirmed existing customs. The Earl, and later his successor, the King, appointed a Viceroy—the Warden of the Stannaries. The last Cornish Stannary Parliament met in 1752, but the need of some such court led to the passing of the Stannaries Act in 1855, which consolidated the Stannary Parliaments of Cornwall and Devon into one Court. In 1896, the Stannaries Courts Abolition Act transferred this jurisdiction to the County Courts. [See Lewis, G. A., *The Stannaries: a Study of the English Tin Mines.* Harvard Economic Studies. 1908.]

— 3. *Deemster*, otherwise written dempster or doomster. The term is connected with the verb to deem in the sense of giving a judgment. The Deemster in theory pronounced the customs of the folk. Cf. The Dooms of Ethelbert.

p. **99**. 1. *Tynwald* is probably connected with the Norse Thing or Meeting of Freemen. (See p. 112 note b.)

— 2. *Keys.* "Plural of Key in specialized use. The reason of the title is not quite clear," *N.E.D.*

p. **101**. 1. *Prodehomes.* Prud'hommes. They correspond to the jurats or Scabini, the elected city magistrates of the Middle Ages.

p. **102**. 1. *Richelieu, Cardinal Armand Jean Duplessis de* (1585–1642). He was made Bishop of Luçon by Henry IV in 1608 and he later took part in the famous States General of 1614. He became a friend of Louis XIII's mother, Marie de' Medici, and, establishing a complete domination over the King, practically governed France till his death in 1642. Richelieu laid the foundations of despotism by disregarding local rights and immunities. He governed the country through financial officers called Intendants, who were responsible only to the King. Hence the story that he destroyed the records of Normandy.

— 2. *Philip le Bel*, or the Fair. Philip IV (r. 1285–1314). He summoned the States General in 1302 to obtain support in his struggle with Pope Boniface VIII.

— 3. *Raoul, Count of Ivry*, uncle of Richard-le-Bon II, Duke of Normandy (r. 996–1026), half-brother of Richard-sans-Peur. For the account of this rising and its suppression by Raoul, see *N. and E.* vol. III, bk. II, ch. I.

p. **103**. 1. *Heretoch*, lit. war-leader. Cf. German *Herzog*, duke.

p. **104**. 1. *Adalides.* Du Cange translates *Itineris Ductores*, i.e. leaders of the army on the march. He quotes Gregory Lopez on their duties according to the Siete Partidas as "adalides have power to decide concerning those matters which arise in incursions of the enemy . . . . to give commands to the almogavares and infantry and scouts in the day-time and sentries at night."

p. **105**. 1. *Almogavares* is derived from the Arabic *Al-Mugavari*, the Scout.

They were foot-soldiers who wore no armour, but dressed in skins and heavy brogues (abarcas). They were armed like the Roman legionary with two heavy javelins, a short stabbing sword and a shield. They were purely professional soldiers and played an important part in the reconquest of Spain from the Moors. Similarly armed mercenaries appeared later in Sicily, the Morea and Asia Minor.

p. **105**. 2. *Almocaden* is derived from the Arabic *Al-Mokaddem*, the front part of anything. The almocaden was a captain of infantry and obtained his name from his position in battle with regard to his men. [Cf. Du Cange, *s.v.*]

— 3. *Ricos Hombres* were the great land-owners and corresponded to the Anglo-Saxon landricas. They were not a feudal nobility, but owed their importance solely to their wealth. They are the same as the *senatores* and *potentiores* of the Visigoths. The name Ricos Hombres does not appear in written documents before the twelfth century.

— 4. *Fueros of Navarre.* *Fueros* means laws and is derived from the Latin *forum*, a law-court.

Navarre was originally a March of the Carolingian Empire lying across the Western Pyrenees, partly in France and partly in Spain. As an independent Kingdom it disappeared when, at the end of the sixteenth century, Henry of Navarre became Henry IV of France. However by 1516, Spain had already annexed all south of the Pyrenees.

— 5. *Siete Partidas del Rey Don Alonzo.* Don Alonzo was Alfonso X or the Learned King of Castile (r. 1252–1284). The Siete Partidas or Seven Divisions was formed by him about 1260, by combining the best of the existing local laws. It was not treated as a Code of Laws till the Cortes of 1338 at Alcala, and even then it might not prevail against any existing *fuero* or law.

p. **106**. 1. *Almogen, Landzthing.* See the author's Essay on "The Ancient Laws of the Scandinavians," published in a later volume in this series.

— 2. *Road of Eric.* After the Swedish King had been elected in the Upsala Thing and had sworn the usual oath at the rock of Mora, he was compelled by custom to make his "Eriksgata" or formal tour through his dominions. On this tour he confirmed the different provinces in their ancient customs and received in return their formal allegiance. [See Geijer, *Hist. of the Swedes*, p. 54.]

p. **107**. 1. *Suerre the priest*, otherwise known as Sverre or Sverru. Though really the son of a smith, he claimed to be son of Sigurd Mund, King of Norway (see below). The Archbishop of Drontheim forced the King, Magnus V, to buy his coronation in 1164 by a promise to hold his crown from the Church. Sverre formed the party of the "Birch-legs" to resist the Church, and, helped by the Nobles, ruled as King, 1184–1202.

— 2. *Sigurd the King.* Sigurd Mund or Sigurd III (r. 1136–1155). He was one of the three sons of Harold Gilchrist (r. 1130–1136) who, claiming to be the natural son of Magnus III (Barefoot, r. 1093–1103), had deposed Magnus IV, last of the line of Harold Harfäger. Harold Gilchrist was in turn slain by another Pretender, and the reigns of his three sons were one long anarchy. They were all slain, and it was an attempt to obtain the crown by help of the Church for Magnus V, who claimed to be a descendant of Sigurd Jorsalfar (r. 1103–1130), that gave Suerre the priest his chance.

— 3. *Eyrarthing of Drontheim* was so called because it was held on the gravel banks of the River Nid near Drontheim (Niðaros). *Eyrar* is from O. W. Scand. *eyrr*, a river bank, or the shore of the sea. It is the same word as öre in the Danish Elsinore (Helsingör).

— 4. *Agdeness.* A district near Drontheim. There is a modern fort on the promontory of Agdenes or Drontheim Fiord.

p. **108**. 1. *Tanais.* The classical name for the River Don. It has been suggested that Odin was originally a caravan leader and warrior of a trading city, "Asgard," on the borders of the Steppes east of the Don, and that he was driven north by the pressure of Pompey's attack on Mithradates in Asia Minor, *circ.* 66 B.C.

— 2. *Sigtuna* (lit. city of victory, from O. W. Scand. *sig-*, cf. Siegfried, and *tún*). The historic Sigtuna on Lake Malar, founded in the 11th century, contains some fine ruined churches, but it was probably a centre of civilization in Sweden in even earlier times.

p. **109**. 1. *Gladheim* (O. W. Scand. *Glaðs-heimr*, Home of Joy). The site of Valhalla, the Hall of Odin, where the dead warriors feast continually.

— 2. *Ygdrasil.* The ash-tree of Life which has roots deep down in the kingdom of Hela or Death; its trunk reaches up heaven-high and spreads its boughs over the whole universe: it is the Tree of Existence. At the foot of it, in the Death Kingdom, sit Three Nornas—Fates—the Past, Present, Future; watering its roots from the Sacred Well. [Cf. Carlyle in "The Hero as Divinity."]

p. **112**. 1. *Oak of Guernica.* Guernica, on the river Mondaca in North Spain, was, until 1876, the meeting-place of the Estates of the Province of Biscay. The meeting round the oak-tree probably dated back to Visigothic times. Cf. the Shire-oak at Leeds, round which the Wapentake of Skyrack met. Cf. also Part II, *Proofs*, p. 206, for similar instances of open-air Courts.

— 2. *Vascongados.* The Vascones were one of the tribes of pre-Roman Spain. *Provincias Vascongadas* is the Spanish name for the famous Basque Provinces whose lordship was contested between Castile and Navarre. Throughout fifteen centuries these provinces were devastated by war, but they retained considerable local autonomy with separate *fueros* until the First Carlist War, 1833–9. After six years hard fighting, the Liberal Cortes at Cadiz prevailed and the Basques, who had merely supported Don Carlos to preserve their autonomy, had to accept a considerable modification of it. The Second Carlist War, 1872–6, was even more disastrous, and, in theory at least, most of their autonomy was lost. However by means of Parliamentary pressure later, the Basques have obtained a considerable measure of municipal and provincial self-government and taxation.

— 3. *Mons Placitorum. Moot-hill of Scone.* Cf. the Hill of Pleas in Iceland, p. 93. Scone was the capital of the Picts, and on the Moot-hill the first recorded National Council met in 906 A.D. It was also called the Hill of Belief, because Constantine, King of Alban, at this National Council issued the Edict regulating the Christian Church in Scotland.

— 4. *King Malcolm.* Malcolm II (r. 1005–1034), son of Kenneth II (r. 971–995). In 1018, he defeated the Northumbrians at Carham-on-Tweed and ravaged the land, until he was bought off by the cession of Lothian. Canute had to confirm this, but in 1031, he forced Malcolm to do homage at Abernethy. Malcolm was one of the Founders of Scotland, and was the first king who handed the crown down to his son directly. His laws, in which he is said to have transformed all Scotland into a feudal monarchy, are apocryphal, for feudalism did not penetrate into Scotland till the time of Malcolm Canmore and his sons. [See *D.N.B.*, Mackay's article on Malcolm.]

— 5. *Crokentorre* (Crockerntorre) is a hill or tor on Dartmoor where the Devon Stannary court met. (See above, p. 587, note 2 to p. 98.)

p. **114**. 1. *Mancipation*, from *mancipatio*, transfer, a later form of *mancipium* (*manucapium*). It is a Roman law term. The formal enrolment of a citizen's possessions in the Census fixed his class in the state, and so it was laid down that no transfer of property already enrolled would be recognized, unless made in a particular form before witnesses. This legal form of conveyance was called *mancipium* or *mancipatio*, and the lands, etc., conveyed by it were called *res mancipi*. Property that could be legally transferred by simple delivery was called *res nec mancipi*, until Justinian abolished the distinction. When a father wished to free his son from parental control (*manus*), he had to sell his son formally to a friend. Then the friend re-sold the son to his father, who could at once legally free him. Hence we get the idea of emancipation from slavery.

— 2. *Fiery Cross* or Fire Cross (called in Gaelic *cros-taraidh* or *craun-taraidh*, the cross or beam of gathering). This was a cross or piece of wood, one end of which had been burnt in the fire and the other dipped in blood, symbolical of fire and sword. It was passed from clansman to clansman, so as to raise the alarm in a district as soon as possible. [See *N.E.D.*, *s.v.* Fire Cross. Cf. Scott, *Lady of the Lake*,

> "He vanished and o'er moor and moss
> Sped forward with the fiery cross."]

p. **115**. 1. *Ponderous weapon.* The Morning-star or Holy-water Sprinkle was a spiked mace or ball, in the latter case fastened to a staff by a chain and used like a flail. [See Hewitt, *Ancient Armour*, vol. III, p. 604.]

p. **115**. 2. *Orvarthing.* O. W. Scand. *örvar-þing*, an assembly summoned by an arrow.

— 3. *Stefnovitni.* O. W. Scand. *stefnu*, citation, summons, and *vitni*, witness: Norwegian *stævne* and *vidne.*

p. **119**. 1. *Mair.* The Scottish form of mayor. It was occasionally borne by the Chief Magistrates of certain Royal Boroughs later called Provosts, but in Scotland generally Mair had a wider meaning, and signified any official with delegated jurisdiction. In Gaelic *Maor* stands for a policeman as well as a steward. [See *N.E.D. s.v.* Mair and Mayor.]

p. **120**. 1. *Manumission*, setting free; *manus*, authority, *mittere*, to send. The duty of freeing one's slaves was often urged on the dying by the clergy. The formula of manumission varied. In Roman times it was generally performed in the prætor's court. The master said to his slave "Be thou free," and the prætor or lictor ratified the act by touching the slave with a rod. In mediæval times, the slave or "neif" was given a charter or sometimes was allowed to purchase a charter of freedom for himself and his family.

— 2. *Drontheim.* Drontheim or Trondhjem is on Drontheim Fiord half way up the West Coast of Norway. It is one of the oldest royal towns.

p. **122**. 1. *Heath of Pennenden.* A common, one mile north-east of Maidstone. It retained one vestige of its former importance until 1820, when the last execution took place there. It is now enclosed as a public park.

p. **123**. 1. *Ynesuuitrin* (Ynys Wydrin), explained by William of Malmesbury as Island of Glass, is another name for Ynys yr afallon—the isle of apples—the *Avalon* or Avilion of the Arthurian Legends. Avalon is the Welsh Elysium—the Isles of the Blest, to which heroes, such as Arthur, go after death. [See Rhys, *Studies in the Arthurian Legend*, pp. 330–337.] It has been suggested that there is some connection between Ynesuuitrin and the Teutonic Glasberg—the Kingdom of the Dead. Glasberg has been confused with the actual Anglo-Saxon village of Glaestingaburh or Glastonbury, and the name Isle of Avalon has thus been given to the district of Central Somerset around Glastonbury Tor. Here a famous abbey grew up with its legends of St. Joseph and the Sacred Thorn. The British Abbey dates back to 601 A.D., and it was replaced by Ine by a Saxon Abbey in 708. Dunstan became Abbot about 946 A.D. and restored much of its glory.

— 2. *Domnania* or Damnonia. South-West England including Cornwall, Devon and perhaps West Somerset. (See Part II, *Proofs*, p. 443.)

p. **125**. 1. *Verulam* [*Verulamium*]. The Roman city near St. Albans. It was originally the stockaded capital of Caswallon, captured by Caesar in 54 B.C. Apparently it was settled by the Romans soon after 43 A.D., for it was a *municipium* when sacked by Boadicea in 61 A.D. Its ruins surrounded by massive rubble walls cover about 200 acres. St. Alban the Martyr is said to have been one of its citizens, and the town which grew up round the famous Abbey, founded in 793 A.D. by Offa of Mercia, was called, like the Abbey, after his name.

— 2. *Eleutherius* was Bishop of Rome, *c.* 176–190, and, according to Bede, sent missionaries to Britain at the request of King Lucius. However the story, originally resting on the authority of the Roman *Liber Pontificalis* (early sixth cent.), is chronologically impossible. Bede says the mission took place in the reigns of Marcus Antoninus Verus and his brother Aurelius Commodus, who became Emperors in 156 A.D. No such Emperors ever reigned together, and the reign of Marcus [Aurelius] Antoninus began in 161 A.D. and ended in 180. He was succeeded by his son Commodus, a youth of nineteen.

— 3. *Vendic tribes*,—the Wends, the German name for the South Baltic Slavonian tribes.

p. **127**. 1. *Fæstingmen.* See Part II, *Proofs*, p. 867, note 1 to p. 305.

p. **128**. 1. *Castaldus* or Gastaldus. Originally a Lombard officer of the King, who acted as bailiff or factor of an estate. The word came to mean a royal officer charged with the government of a district. [See Du Cange, *s.v.*]

p. **129**. 1. *John Selden* (1584–1654). A Parliamentary lawyer under James I and Charles I. His *History of Tythes* was officially suppressed. He was imprisoned under James I for his hostility to the king, but continued to oppose Buckingham. He took a leading part in the Five Knights' case and in the struggle for the

Petition of Right. He remained a strong Parliament man down to the execution of Charles I. He was a voluminous writer on legal subjects.

p. **130**. 1. *Mass-thane, World-thane.* For much curious information on the Early Saxon Parish, see Abdy, *Church and Manor.*

— 2. *Adilberga.* Bercta (Bertha), daughter of Charibert, King of Paris. [Bede, bk. i, c. 25, and Plummer's note.]

p. **131**. 1. *Getimbrian,* to timber, to make of wood instead of stone. The Anglo-Saxon timber Minster at Greenstead in Essex (*c.* 1012) still stands.

— 2. *Theodore of Tarsus* (602–690), seventh Archbishop of Canterbury, was sent by Pope Vitalian in 668 A.D. to reorganize the English Church. He did his work so well, that men have even ascribed to him the division of the island into parishes. He planned to hold an annual Church Council and did call several, thus helping on national unity. The *Penitential* or *Book of Discipline* ascribed to him is printed in Haddan and Stubbs, *Concilia,* vol. III, pp. 173–204.

— 3. *Excerptiones.* Not by Egbert [see Haddan and Stubbs, *Concilia,* vol. III, p. 415].

p. **132**. 1. *Theodosian Code.* In 429 A.D. the Emperor Theodosius the Great appointed a committee of nine to collect the "Constitutions" of the Emperors since Constantine, apparently with the design of anticipating Justinian. However little progress was made, and in 435 a second committee of sixteen was appointed, which in three years had codified the existing laws and divided them into sixteen books, further sub-divided into titles by rubrics. Unfortunately the Code has only survived in a fragmentary state, and we owe much of our knowledge of it to such barbarian extracts as the Breviary of Alaric II. (See above, p. 582, note 2 to p. 34.)

p. **134**. 1. *St. Etheldreda,* otherwise known as St. Æthelthryth and St. Audrey. She was the Patron Saint of Ely. Daughter of Anna, King of the East Angles, she was forced to marry Egfrith of Northumbria, despite her wish for the religious life. Helped by Wilfrid, she left Egfrith and founded a religious house among the swamps of Ely, of which she became abbess 673 A.D. Her husband took another wife and avenged himself on Wilfrid by driving him from his see.

p. **135**. 1. *Histories of Ramsey and Ely.* To these should be added the *Feodarium Prioratus Dunelmensis,* edited for the Surtees Society by Canon Greenwell of Durham. Several transactions can be traced, which are suspiciously like mortgages (e.g. the grantor professes to leave or give land to the Prior and Convent in return for help afforded in *mea magna necessitate*). The offerings at St. Cuthbert's shrine were probably used for that purpose.

— 2. *Cissa.* One of the subreguli or under-kings who ruled the district round Abingdon under Centwine of Wessex, *c.* 680 A.D. [See Birch, *Cart. Saxon.,* no. 101.]

p. **136**. 1. *St. Oswald, patron and advocate of Worcester.* Bishop of Worcester (tenth century), nephew of Odo, Archbishop of Canterbury, and also related to Oskytel, Archbishop of York. He was himself of Danish parentage and was educated by Odo and provided with the Abbey of Winchester, then a house of secular canons. To Odo's delight, Oswald became an enthusiastic supporter of the monks or Regular Benedictines, and, after studying at the Benedictine Abbey of Fleury on the Loire in France, he returned to England. Odo was now dead, but Oskytel won for him the help of Dunstan, and he so ably supported Dunstan and Ethelwold of Winchester, the champion of the Benedictines, that he was made Bishop of Worcester. However he was a gentle reformer and a patron of learning and in 972 A.D. was appointed to the see of York. He still retained Worcester and returned there to die in 992 A.D. He was buried in Worcester Cathedral and at his shrine miracles were performed. (See Part II, *Proofs,* p. 696, note c.)

— 2. *Hemingus,* the chronicler. Sub-prior of Worcester under Wulfstan *c.* 1096. At that bishop's command he compiled the chartulary here referred to. The MS. still exists as MS. Cotton Tiberius A xiii under the title *De Ecclesiae Wigorniensis dotatione privilegiis et possessionibus.* The whole chartulary, along with extraneous matter such as the Life of Wulfstan, was printed by Hearne at Oxford in 1723.

p. **138**. 1. *Oudoceus.* Bishop of Llandaff (*c.* 630 A.D.), where he is said to

have succeeded St. Teilo. According to the Book of Llandaff, he was son of Budic of Cornouaille (Britanny) and Ananned, a woman of Dyfed (West Wales). Budic is said to have been a king in Britanny *c.* 500, and Ananned to have been sister of St. Teilo, who trained Oudoceus to be his successor. However, as the grants of land to Oudoceus, as recorded in the Book of Llandaff, fix his date as *c.* 630, the story is chronologically impossible.

p. **138**. 2. *Ceolwulf.* King of Northumbria (r. 729–737), to whom Bede dedicated his *Ecclesiastical History.* He was famous for his generosity to the Church. In 731 he was for a time deposed and forced to become a monk, and later in 737 he voluntarily resigned his throne to his cousin Eadberht and retired into a monastery.

— 3. *Ninian* is said to have been a Strathclyde Briton who was educated at Rome. He founded a church at Whithern on the west coast of Wigtown Bay. Bede says it was called Candida Casa, the White Church, because it was built of stone, and that it was dedicated to St. Martin of Tours, while Ailred of Rievaulx says that St. Martin provided the masons. Ninian is said to have died in 432 A.D.

— 4. *Ethelred* who became king of Northumbria on the deposition of Alchred in 774 was the son of Moll Ethelwold. He had a stormy reign. Expelled from his throne in 778 or 779, according to Simeon of Durham, for the murder of three High Reeves, he won it back in 790. He married a daughter of Offa. He was murdered at Corbridge in 796, and the kingdom of Northumbria rapidly declined.

p. **139**. 1. *Eutychian heresy.* The error of Eutyches, an abbot at Constantinople in the fifth century, who maintained that after the hypostatic union there was but one nature in Christ. Later the general name of Monophysites was applied to those who followed him at Alexandria.

p. **140**. 1. *Cealchythe.* Now generally identified with Chelsea. [See Haddan and Stubbs, *Concilia,* vol. III, p. 445.]

p. **141**. 1. *Wini,* according to Bede, a West Saxon, who was educated in Gaul and made Bishop of Winchester (*c.* 660 or, according to Stubbs, 663) by King Coenwealh, when he grew tired of the barbarous tongue of Agilbert, the French scholar who came from Ireland to convert that King's people. Agilbert refused to share the see with Wini and returned to Gaul. Wini himself was soon expelled and took refuge with Wulfhere of Mercia, from whom he purchased the see of London, which he held till his death. In 664 or 666 it fell to Wini as the only canonical bishop in the island to consecrate Chad at Winchester with the doubtful assistance of two Welsh bishops.

—2. *Edsi* or Eadsige (Archbishop of Canterbury, 1038–1050), succeeding Ethelnoth, "the good archbishop." In 1043, he consecrated Edward the Confessor as king, but next year "through infirmity" obtained the king's consent to the consecration of Siward, Abbot of Abingdon, as suffragan or assistant, lest another should attempt to buy the see. In 1048, Siward resigned and Edsi took the see again, but in 1050, he died and was succeeded by Robert of Jumièges.

p. **145**. 1. *Thurkettle* (Thurcytel), according to the Pseudo-Ingulph, was of the blood-royal and acted as chancellor to Athelstane and some of his successors. He won high favour by his valour at the battle of Brunanburh as commander of the Londoners and the Mercians. Later he became Abbot of Croyland and vigorously asserted the rights of the abbey.

p. **151**. 1. *Murdrum.* A late Latin word formed from the root seen in Old English *morðor* and Old French *murdre,* meaning "a *secret* killing" as opposed to the open revenge of a private wrong. The word is akin to the Latin *morior,* to die. (Cf. Part II, *Proofs,* p. 173.)

p. **152**. 1. *Visne.* Formed from the Latin *visnetum,* the neighbourhood, i.e. the four nearest vills who were responsible for the arrest of any murderer or criminal among their inhabitants. [For the whole matter see Pollock and Maitland, *History of English Law,* especially vol. II, pp. 486–7.]

p. **153**. 1. *Exe.* This should really be the Wye. (Cf. above, p. 585, note 1 to p. 80 on the *Devonian Compact.*)

p. **154**. 1. *Team or generation.* For the meaning of "Team" see Pollock and Maitland, *op. cit.* vol. I, p. 579, where the interpretation traditionally accepted

is disputed. "Apparently it ought to mean the right to hold a court into which outsiders may be vouched as warrantors." [See Bosworth-Toller, *Anglo-Saxon Dictionary, s.v.*]

p. **155**. l. *Concionator.* The village crier or beadle, who seems to have acted as the general servant of the vill. (Cf. Part II, *Proofs*, p. 169.)

p. **157**. l. *Frankpledge* (*francum plegium*). Apparently a mistranslation of the A.S. *frith-borh* which really means peace-pledge. But the form in the Laws of Edward the Confessor is *friborg*. (Cf. p. 161 and Part II, *Proofs*, pp. 137, 148, 167.)

[For the whole question see Pollock and Maitland, *op. cit.* esp. vol. I, pp. 568–571.]

p. **161**. l. *Manupast.* A dependent fed by the hand (*manu, pascere*) of a lord (or loaf-giver). [See Pollock and Maitland, *op. cit.* esp. vol. II, pp. 530–532.]

p. **165**. l. *No view of Frankpledge . . . . in Northern Baronies*, etc. Pollock and Maitland, *op. cit.* vol. I, p. 570, quote the Laws of the Confessor for the statement that in Yorkshire *tenmannetale* corresponded to *frith borgas* elsewhere, but point out that historically at least the former word is the name of a tax, perhaps identical with Danegeld.

p. **169**. l. Liebermann, *Gesetze*, vol. i. p. 330.

p. **170**. l. *Summary decapitation.* This practice survived in Northumberland at least down to the reign of Edward I. See preface to Page's *Assize Rolls of Northumberland* (Surtees Society), No. 88, p. xx, and numerous examples in the Rolls, e.g. 70, 73, 79, etc. (Cf. also Part II, *Proofs*, pp. 258, 259.)

p. **171**. l. *John Howard* (1726–1790). A famous English philanthropist and prison reformer. His experience as High Sheriff of Bedford in 1773 caused him to devote his life to reforming prison conditions both in England and abroad. He was thanked for his work by the House of Commons in 1774, and in 1777 he published his famous work on "The State of the Prisons in England and Wales." He died abroad in 1790 from camp-fever. The reference in the text is to the fine statue in St Paul's. There is another statue to him at Bedford.

p. **172**. l. *Hond-habbend*, having (stolen property) in one's hand; *back-barend*, having (stolen property) on one's back. [See Bosworth-Toller, *Anglo-Saxon Dictionary, s.v.* Cf. p. 24 and Part II, *Proofs*, p. 202, and see Pollock and Maitland, *op. cit.* vol. I, p. 577.]

p. **174**. l. *Halifax.* The authorities from which the author derived this inference are not accurate. The custom at Halifax was of comparatively modern origin. At the time of the introduction of the cloth trade in the fifteenth century, Halifax was a mere hamlet of thirteen houses, but henceforth it grew rapidly, until, at the end of the sixteenth century, the number had increased to five hundred and twenty, probably largely due to the influx of fugitive weavers driven by Alva's cruelty from the Netherlands. The first recorded instance of the "Gibbet Law" being put into force was in 1541. Under it any one who stole goods worth more than 3d. was tried by a jury of sixteen frith-burgesses and, if found guilty, was executed on market day on what is still called "gibbet-hill," an eminence just outside the old village. The gibbet was a sort of guillotine and was last used in 1650.

p. **175**. l. *Halidom*, lit. holiness, cf. king-dom. It was the Bible, the Book of the Gospels, a sacred relic, or the Sacrament of the Altar. (Cf. Part II, *Proofs*, p. 161.)

p. **179**. l. *Frotho.* The third of that name in Saxo Grammaticus. "De qualibet vero controversia ferro decerni sanxit, speciosius viribus quam verbis confligendum existimans."

p. **180**. l. *"Ladies love and druery."* The full quotation is

"And of ladyes love-drury
Anon I wol yow telle."

It occurs (l. 184) in Chaucer's "Rime of Sir Thopas" in the *Canterbury Tales.* The word is derived from the Old French "drut" or "dru" and means friend. [See *N.E.D. s.v.*]

— 2. *Gunnlaug's Saga.* See Part II, *Proofs*, p. 188, for the story of how Gunnlaug by a trick won for his wife the fair-haired Helga, daughter of Thorstein the Wise.

p. **181**. l. *Assart.* A clearing in the forest made for agricultural purposes.

The word is derived from the late Latin *exsartare*, the frequentative form of *exsarrire*, to weed or hoe thoroughly, to make land fit for cultivation.

p. **184**. 1. *Forms of Process.* For a learned discussion of these, see Pollock and Maitland, *op. cit.* vol. II, pp. 558–673.

p. **186**. 1. *Esplees.* The plural form of the old French *esplet* or *esploit*, revenue. *Esplet* is derived from the Latin neuter participle *explicitum*, something unfolded or extracted, or accomplished. (Hence modern sense of exploit, achievement.) The *esplees* were the produce yielded by the land whether crops or money. [See *N.E.D. s.v.*]

— 2. *Ranulf de Glanville.* The Northern sheriff who captured William the Lion at Alnwick in 1174. He was one of Henry II's ablest officials, and not only helped him both in war and diplomacy against his rebellious sons and their ally the king of France, but was also a Justice in Eyre and a member of Henry's Central Law-court. He went on the Third Crusade with Richard I and died at Acre, 1190. On the evidence of Roger of Hoveden, Glanville is accepted as the author of the "Treatise on the Laws and Customs of England."

— 3. "We must now proceed to tell how recourse is had to the Superior when a man has lost both natural and civil possession."

p. **187**. 1. "When therefore the disseised has been so negligent in this matter that he *will not or cannot eject his disseisor*, by the kindness of his Prince he is helped through the inquest of the Assize of Novel Disseisin, a process devised and thought out in many vigils."

p. **191**. 1. *Civilian.* One skilled in the Roman or civil law. *Cent. Dict.*

p. **193**. 1. *Robert Joseph Pothier* (1699–1722). A famous French jurist. He was Judge of the Presidial Court of Orleans and won fame by his edition of the Pandects of Justinian, published 1748–1752. Later he was Professor of Law at Orleans and his writings contributed largely to the formation of the French *Code Civil.*

p. **197**. 1. *Ralph Niger* (*floruit circ.* 1170). An historian and theologian educated at Paris. He was a violent partisan of Becket. Accused before Henry II, he fled into exile and there wrote, besides theological works, two Chronicles. His materials are mostly borrowed, but he is famous for his savage attacks on Henry II.

p. **199**. 1. *Trial by Jury.* For the modern view of the origin and work of the Jury, see Pollock and Maitland, *op. cit.* vol. I, pp. 138–149, and vol. II, pp. 616–632, 641–659.

p. **204**. 1. *Vicecomes*, lit. the earl's or count's deputy, a description which is correct on the continent, and refers to an official corresponding somewhat to the sheriff. Hence the Norman lawyers translated sheriff by *vicecomes*, but the sheriff was actually the king's deputy and not the earl's.

p. **205**. 1. *Meliores*, the better men; *Fideles*, the faithful or loyal men; *Proceres*, the chiefs or leading men. Probably all three terms refer to the same persons and mean the chief landowners of the hundred.

p. **206**. 1. *Maxima Concio*, lit. greatest assembly. Here it means the folkmoot attended by all the suitors of the Court.

p. **210**. 1. *Assizes of Clarendon or of Northampton.* The former assize was held 1166 A.D., the latter 1176 A.D. The Constitutions of Clarendon were issued in 1164, and dealt with ecclesiastical immunities in such a way. as to provoke the outburst of the quarrel between Becket and Henry II, which ultimately caused the murder of the former. [For the Assizes, see Stubbs, *Const. Hist. of England*, vol. I, pp. 505 ff., and Pollock and Maitland, *op. cit. passim.* For the Constitutions, see Pollock and Maitland, *op. cit.* esp. vol. I, pp. 447–457, and Stubbs, *op. cit.* vol. I, pp. 498 ff.]

— 2. *Honour of Warenne.* Stubbs reads here Wallingford, and gives a different explanation from that of the author. He says that the Honour was an escheated estate, kept in the king's own hands, and treated like a separate shire. Naturally the inference to be drawn is, that if the King's own estates were to be subject to the Assize, much more so those of the great nobles. [See Stubbs, *op. cit.* vol. I, p. 433 note.] As Stubbs points out in his preface to Benedict Abbas in *Chronicles and Memorials*, Rolls Series, No. 49, vol. II, p. cli, it is really a question of the proper extension of the abbreviated form Warreng.

— 3. "Acting on the advice of the Archbishops, Bishops, Abbots, and the others, his Barons."

p. **210**. 4. *An undetermined year.* This has since been shown to belong to the thirty-first year of Henry I.

p. **213**. 1. *Frank-almoign.* "Tenure of Lands or Tenements bestowed upon God, that is, given to such People as devote themselves to the Service of God, in pure and perpetual Alms; whence the Feoffers or Givers cannot demand any terrestrial service." [Blount, *Law Dictionary.*]

— 2. *Grand Assize.* See Pollock and Maitland, *op. cit.* vol. I, pp. 147, 148.

p. **215**. 1. *Statute of Marleberge,* 53 Hen. III. This is the famous Statute or Provisions of Marlborough, passed after the Barons' War in an "assembly of the barons of the realm both great and small." The date is really 1267 A.D., that is 52 Hen. III. [See Nicolas, *Chronology of History,* p. 347. For the section of the Statute referred to, see Pollock and Maitland, *op. cit.* vol. I, p. 585.]

p. **217**. 1. *Writ de odio et atiâ.* The writ anciently called *breve de bono et malo,* addressed to the sheriff to enquire whether a man imprisoned on a charge of murder was justly suspected or only accused "by malice and ill-will." If the accused on inquisition being held was found not guilty, a second writ ordered the sheriff to bail him. The process has now been superseded by the Habeas Corpus.

p. **221**. 1. *Chilperic I* (d. 584). Fredegonda was the third wife of Chilperic. [See Genealogical Table I, *N. and E.* vol. I.]

p. **222**. 1. *Præpositus,* etc. For the local government generally, see pp. 64 ff. The præpositus of the hundred would be the bailiff of the hundred, who was the deputy and nominee of the sheriff.

p. **231**. 1. "Where the court of the Lords is shown to have failed to do justice."

— 2. *Domus . . . libertas.* This explanation is unfounded: *sōcn* is the noun of *sēcan,* to attack. Flemen firth and Scott's Flemen's firth are corruptions of A.S. *flȳmena firmþ.*

p. **234**. 1. *Feorm,* for *ferm,* mod. *farm,* Latin *firma.* The rent or contribution due to the King from each landowner, at first in kind. When the king "booked" land to the Church or a thane, he actually gave at first only the right to receive the King's dues in that village. Cf. Bede, bk. IV, ch. 13, "At this time (*c.* 681 A.D.), King Ethelwald (of the South Saxons) gave . . . Wilfrid land of eighty-seven families to maintain his company."

p. **238**. 1. *Pandulphus* (d. 1226). The Papal Legate who, sent to negotiate with King John, excommunicated him before his courtiers. In 1213, he received John's solemn submission, and in turn did his best to prevent the French expedition. He was again sent to England in 1215, and was present at Runnymede. For his help John made him Bishop of Norwich, but he seems to have been superseded as Legate by Gualo until 1218. Then, as he interfered too often, Hubert de Burgh procured his formal recall as Legate and he had to be content with his bishopric.

p. **248**. 1. *Gisarme.* A long-handled weapon with a long edge for cutting and a sharp point in line with the handle. [Hewitt, *Ancient Armour,* vol. I, p. 50.]

— 2. *Wambace* (*gambeson*), Old French *gambais, wambais.* It was a sort of quilted doublet generally made of leather.

p. **260**. 1. *Ptolemy.* Claudius Ptolemæus, the famous astronomer, mathematician and geographer, who lived in the early part of the second century of our era. He was the founder of the Ptolemaic theory of the motion of the heavenly bodies. His astronomical work, the *Almagest,* was paralleled by his *Geographike Syntaxis.* He drew up a map of the world but, although he showed a remarkable knowledge of some parts of the coast of England, he was wrong as to the position of Ireland, which was placed north of Wales, and he showed Scotland with its longest dimension east and west, and placed the country at right angles to the east coast of England. His map is vitiated by the adoption of the measurements of Posidonius, whose equatorial degree is only five-sixths of the true measurement, but he was the first writer to use the terms latitude and longitude in their technical sense. [See maps, reproduced from early editions of his work, in App. I of Elton's *Origins of English History,* London, 1890.]

— 2. *The Coritani* had their settlements south of the Humber and lay between the Iceni of East Anglia and the Brigantes of Yorkshire.

— 3. *Caledonians including the . . . Picts.* Caledonia is said to mean the woody country, Welsh *celydd,* a wood. Tacitus used the term Caledonians to describe the Southern Picts who fought against Agricola. [For the question

of the Picts see Guest, *Origines Celticae*, vol. II, p. 29, and Skene, *Celtic Scotland*. See also Part II, *Proofs*, pp. 625 ff.]

p. **261**. 1. *Boadicea.* Probably the correct form is Boudicca, the Celtic equivalent of Victoria. She was the wife of Prasutagus, King of the Iceni of East Anglia. Prasutagus was an ally of the Romans, and on his death left them half his kingdom in the vain hope of preserving the rest for his wife and daughters. When the Romans seized all his lands, his wife protested. She was scourged and her daughters outraged. Boadicea took advantage of the absence of Suetonius Paulinus in Anglesey to rouse the Britons, and sacked the Roman cities of Verulamium, Camulodunum and Londinium. However Suetonius managed to rally the Romans and utterly defeated her and slew eight thousand Britons in a battle, traditionally placed near King's Cross Station [but see Scarth, *Roman Britain*, p. 50]. The beaten queen then committed suicide, 62 A.D. A magnificent statue of the "British Warrior Queen" by Thorneycroft now stands on Westminster Bridge.

— 2. *Cartismandua.* The wife of Venusius, chief of the Brigantes of Yorkshire. According to Richard of Cirencester, a dubious authority, she was herself a Roman. Cartismandua is notorious for her betrayal to the Romans of her step-son, the brave Silurian chief Caractacus (Caradoc), who for nine years had resisted the Roman general Ostorius Scapula.

p. **262**. 1. *Claudius.* Tiberius Claudius Drusus Nero, Emperor of Rome (r. 41–54 A.D.).

p. **263**. 1. *Caracalla.* Marcus Aurelius Antoninus Bassianus, Emperor of Rome (r. 211–217 A.D.).

— 2. *Papinian.* Æmilianus Papinian was a Roman Jurist, 175–212 A.D. He was made Pretorian Prefect by Severus, but was put to death by Caracalla, who had dismissed him because he was too noble, and who executed him because he would not defend the murder of Geta.

— 3. *Bruto, Brutus.* The fabled eponymous hero of the Britons. He was son of Silvius, whose father was Ascanius, son of Aeneas. [See Geoffrey of Monmouth, bk I, ch. 3 ff.]

p. **265**. 1. *Cogidumnus.* A British chief who, unlike Caractacus, submitted to the Romans and was rewarded by an extension of territory at the expense of his more patriotic neighbours. Both he and Prasutagus, king of the Iceni, were only client-princes of the Empire and bound to help their lord the Emperor.

— 2. *Regni.* Probably they inhabited the part of Sussex around Chichester which was called Regnum by the Romans. For Lucius see p. 125.

p. **268**. 1. "Irenarchs, military magistrates appointed to the end that, having undertaken the guardianship of the provincials, they should establish the harmony of order and peace, each throughout his own district."

p. **269**. 1. *Age of the Antonines.* This was the "golden age" of the Roman Empire, and comprised the reigns of Nerva, 96–98 A.D., Trajan, 98–117 A.D., Hadrian, 117–138 A.D., Antoninus Pius, 138–161 A.D., and of Marcus Aurelius, the Philosopher King, 161–180 A.D.

p. **270**. 1. *Curiales.* The members of the Curia or governing body of a Roman Provincial Municipality, especially under the Later Empire. In practice the word came to mean the Middle Classes who were made responsible to the Emperor for the taxation due from their district or *civitas*. They had to make good all deficits and were legally unable to abandon their status, which was hereditary. They were slowly ruined by their accumulated burdens. [See Reid, J. S., *Municipalities of the Roman Empire*, Cambridge Univ. Press, 1913.]

p. **271**. 1. *Council of Arles.* When the Empire fell, this Convention was on its way to becoming a sort of Senate for the Prefecture of Gaul, rivalling that of Rome, and it perhaps formed a centre of unity for the Provincials during the Gothic invasions.

p. **276**. 1. *Honorius*, son of the great Theodosius was Emperor in the West, (395–423) while his brother Arcadius (395–408) ruled in the East. Honorius was a feeble ruler who only showed vigour against heretics. According to some accounts, he abolished gladiatorial shows and improved the criminal law.

p. **278**. 1. *Assembly at Toulouse.* This was a meeting held 506 A.D., and was analogous to the Council of Arles.

p. **278**. 2. *The Anian Breviary.* See above, p. 582, note 2 to p. 34.

p. **281**. 1. *Diocese* (in Greek, *dioikēsis*). This was a subdivision of the Prefecture, one of the main divisions into which Diocletian reorganized the Empire. By the end of the fourth century, there were four Prefectures, the East, Illyria, Gaul, and Italy, and thirteen Dioceses, of which Britain composed one. There was a further subdivision into one hundred Provinces. Later the term Diocese was borrowed by the Church to describe the sphere of a Bishop's authority.

p. **286**. 1. *Richard of Cirencester.* The real Richard of Cirencester (1355–1400) was a monk of Westminster whose only extant work is the *Speculum Historiale de Gestis Regum Angliæ*, an account of the Anglo-Saxon kings before the Conquest, and is of little original merit. In 1747, there was published at Copenhagen, together with the works of Gildas and Nennius, a work called *De Situ Britanniæ*, which was ascribed to Richard of Cirencester. It is now known for certain that this was a forgery by the Editor, Charles Julius Bertram, Professor of English at Copenhagen. It completely deceived Stukeley, the eminent eighteenth century antiquary, but in his Introduction to the *Speculum* which he edited for the Rolls Series (1863–9), Professor Mayor exposed the fraud both by internal and external evidence, and traced the sources of the information used by Bertram in compiling his forgery.

p. **287**. 1. *Inscription . . . at Chichester.* Printed in *C.I.L.* vii, 11. The expansion of R into Regis is very doubtful.

p. **288**. 1. *Aquæ Solis*, lit. waters of the sun, the Roman name for Bath, sometimes called Aquæ Sulis, because of the altars there dedicated to the goddess Sul.

— 2. *Sylla* (Lucius Cornelius Sulla Felix, 138–78 B.C.) and *Marius* (Caius Marius, 159–86 B.C.), were the leaders respectively of the Aristocratic and Democratic factions at Rome.

p. **289**. 1. *Triumvirate.* The reference is to the Second Triumvirate, the alliance of Octavian (Cæsar's adopted son and successor), Mark Antony and Lepidus, formed in 43 B.C. to avenge the death of Julius Cæsar.

— 2. *The Trinobantes.* The British tribe which inhabited the district round Colchester, and the South of East Anglia generally. The North of East Anglia was held by the Iceni, for whom see above, p. 596, note 1 to p. 261 on Boadicea.

p. **290**. 1. *The Limitanei* or Limitaneans. The troops who defended the *Limes* or Roman Rampart which ran across South-West Germany from Coblenz on the Rhine to Ratisbon on the Danube.

— 2. *The Riparian soldiery* or Ripuarii. The troops defending the frontier rivers such as the Rhine, the Danube and the Euphrates.

p. **294**. 1. *Galgacus.* The leader of the Caledonians whom Agricola defeated at Mons Graupius or Granpius, the position of which is much contested.

— 2. *Walls of Septimius Severus, of Hadrian, and of Lollius Urbicus.* The general result of recent investigation tends to prove that the Stone Wall and the Vallum that ran between Tyne and Solway were built by the Emperor Hadrian, *c.* 120 A.D., and were repaired and strengthened by the Emperor Septimius Severus, *c.* 208 A.D. Lollius Urbicus, Imperial Legate of Antoninus Pius and Proprætor in Britain, was the builder of the wall between Forth and Clyde, sometime after 138 A.D. It was made of turves or sods with a stone base and served to connect the line of forts built about 81 A.D. by Julius Agricola.

p. **296**. 1. *Magistri Militum*, lit. Masters of the Soldiery. The *Magister Militum* was the General Commanding in Chief of one of the Imperial Prefectures. He was the highest military officer and corresponded to the civilian Pretorian Prefect. [See Gibbon, vol. II, p. 319.]

p. **297**. 1. *Brancaster* lies between Wells and Hunstanton on the North Coast of Norfolk. Its Roman name was Branodunum. [See Map I in *The History of the Anglo-Saxons*, vol. V of this series.]

— 2. *Portus Adurni.* Probably Aldrington in West Sussex.

p. **298**. 1. *Theodoric.* King of the Ostrogoths (*c.* 454–526). *Anastasius I.* Emperor (*c.* 430–518).

p. **299**. 1. *Ariovistus* (*fl.* during second half of the first century B.C.). A German Chieftain. The title of Rex was conferred by the Roman Senate.

— 2. *Merobaudes.* A Frankish chief upon whom the Emperor Gratian

(r. 367–383 A.D.) conferred the Consulship. [See Sismondi, *Fall of the Roman Empire*, vol. I, p. 110.]

p. **301**. l. *Arbogast, Salogast,* together with Widogast and Bodogast, were the old Salic Judges.

— 2. *Vase of Soissons.* Gregory of Tours tells us that when at Soissons the Franks were sharing out the spoils of Gaul, Clovis, their king, begged for himself a precious vase that had belonged to the Church at Rheims. The army agreed, but a certain soldier struck the vase with an axe saying "you shall have nothing here but what falls to you by lot." Clovis dared not openly resent this, but the soldier afterwards paid dearly for the slight. For the story and Hallam's comments, see *Middle Ages*, vol. I, p. 155.

p. **302**. l. *Childebert I* of the Merovingian Dynasty, ruled at Paris, 511–558. *Clothaire I* of the same Dynasty, ruled at Soissons from 511, sole King of the Franks, 558–561. [See Genealogical Table I, *Normandy and England*, vol. I.]

p. **305**. l. *Quintilius,* brother of the Emperor Claudius Gothicus, who, on the latter's death in 270 A.D., vainly attempted to dispute the accession of Aurelian, who had been nominated Emperor by Claudius. [See Gibbon, vol. II, p. 9.]

— 2. *Valerian* became Emperor in 253 A.D. when Aemilianus, the murderer of Gallus, was himself killed. He associated his son Gallienus with him in the Empire, but the latter was a worthless youth and far inferior to his father. The Empire was attacked both by the Germans and the Persians and neither Gallienus on the Rhine nor Valerian in the East could gain any lasting success. Valerian was taken prisoner by the Persian king Sapor in 260 A.D. and died in captivity. Gallienus had to be content with such parts of his realm as the "Thirty Tyrants" left him, and in 268 A.D. he was murdered. With his last breath he named Claudius Gothicus as his successor. [See Gibbon, vol. I, pp. 388 ff.]

— 3. *Posthumus.* The general of Gallienus who won the title of Conqueror of the Germans and Saviour of Gaul. He was later proclaimed Emperor, and, after seven years' hard fighting against rival pretenders, he was slain by his own soldiery for refusing them the plunder of the captured city of Mainz, 267 A.D.

p. **306**. l. *Victorina,* mother of Victorinus, who was associated in power with Posthumus and slain with him in 267.

— 2. *Julia Mamæa,* created Augusta, mother of Alexander Severus (Roman emperor 222–235 A.D.) was killed with her son, in a mutiny, in 235.

p. **307**. l. *Galerius* was appointed by Diocletian (292) with the title of Caesar to administer the affairs of Gaul, Spain and Mauritania.

— 2. *Avitus.* A Senator who was proclaimed Emperor by the Assembly of Arles, 455 A.D. He afterwards took up his residence at Rome, but he became so unpopular by his profligacy that Ricimer, the Commander of the Barbarian Auxiliaries, deposed him in favour of Majorian after a battle near Piacenza. He was allowed to become a bishop, but was murdered soon afterwards, 457 A.D. [See Gibbon, vol. IV, pp. 260 ff.]

p. **308**. l. *Maximian.* He became the colleague of Diocletian in 286 A.D. By origin a peasant of Sirmium, he was a fierce and cruel soldier who was used by Diocletian to put down the various rebellions in the Empire. As ruler of Italy, he treated the Senate with studied neglect. In 305 he was forced by Diocletian to join him in a renunciation of the Empire. Not long afterwards he made an attempt to regain power, but both his own son Maxentius and his son-in-law Constantine opposed him and he was at last compelled to commit suicide, 310 A.D. [See Gibbon, vol. II, pp. 66 ff.]

p. **311**. l. See *History of the Anglo-Saxons,* vol. V of this series, where these coins are reproduced.

p. **313**. l. *Helena.* The reference is to Geoffrey of Monmouth, bk V, ch. 6.

— 2. *Trahern, Marius* and *Leoline.* Their adventures are told by Geoffrey of Monmouth in bk. V, ch. 8.

p. **314**. l. *Crocus or Erocus.* King of the Alemanni, and was probably the first *independent* barbarian King who assisted the Romans. Erocus may be a corruption of Eric or perhaps of Ertoccus, which in turn may be a Latinized form of the Teutonic Heretoga or Herzog, a commander (*dux militum*). Cf. Brennus as the name of a Celtic King. [See Gibbon, vol. II, p. iii, and Lappenberg, *Hist. of England*, vol. I, p. 47.]

p. **314**. 2. *Magnentius* seized power in 350 A.D. on the murder of Constans, but by 353 A.D. he had been completely defeated by Constantius and committed suicide. [See Gibbon, vol. II, pp. 375 ff.]

p. **315**. 1. *Maximus* was a native of Spain. Tradition has it that he was *Dux Britanniarum*, Commander of the Northern Garrisons, and married to a British wife. He seems to have been a very able man, who was tempted by the supineness of Gratian to rebel against him in 383 A.D., on the invitation of the soldiery. To forestall attack by Gratian, he crossed over to Gaul with a large army and was so well received that the Emperor in a panic fled from Paris to Lyons, where he was murdered. His colleague Theodosius had to make peace with Maximus, and surrender all territories west of the Alps. Unfortunately for himself, Maximus was not content with the great wealth he gained by extortion, and he attempted to wrest Italy from Valentinian II, Gratian's step-brother. Theodosius took up the defence of Italy and not only defeated Maximus and drove him into Aquileia, but also put him to death, 388 A.D.

p. **316**. 1. *Gratian* (r. 375–383 A.D.) The son and successor of Valentinian I. He drove back the Alemanni and, on the defeat and death of Valens at Adrianople in 379, he named Theodosius, Emperor in the East. So long as his old advisers lived, Gratian ruled well, but later his life became less admirable, although by his devotion to the Church he won the support of the clergy. Finally, after alienating his troops by favours shown to the Alans, he was abandoned by them and slain at Lyons by a follower of Maximus.

p. **318**. 1. *Reged.* Mr Hodgson, the author of the *History of Northumberland*, supports the claim of Redesdale in Northumberland to be the centre of the Kingdom of Reged [vol. I, pt. 2, p. 133]. Near by are the Eildon Hills with their Arthurian traditions.

— 2. *Maxim Wledig*, Maximus the Supreme Ruler. For Wledig see p. 346, note b.

— 3. *Host of Lochlin.* Lochlannach. Sharon Turner identifies Lochlin (Lochlann) with Scandinavia. [*Hist. of the Anglo-Saxons*, vol. I, p. 202.]

p. **322**. 1. *Hallelujah victory.* This was a marvellous victory gained by the Britons under the leadership of St. Germanus over the Saxons in 429 or 430. The story is told by Bede in bk. I, ch. 20.

p. **324**. 1. *The Lay of Attila* or Etzel, king of the Huns, is part of the saga cycle of Dietrich of Bern (Theodoric the Ostrogoth of Verona), who was supposed to have taken refuge from Otomer (Odoacer) with Attila. In its earliest form it goes back to the seventh century. In the older English poetry there is only the mere mention of his name.

— 2. *Havelok the Dane.* The Anglo-Norman *Lai d'Havelok* (twelfth century) and the English *Havelok* (*c.* 1300) describe the deeds of this hero. He is identified with Anlaf Cuaran, son of Sihtric, King of Northumbria. (See Part II, *Proofs*, pp. 590, 592, and *The History of the Anglo-Saxons*, vol. V of this series. p. 253, note 2 on p. 123.)

— 3. *Maiden Rimnild* or Rymenhild. The heroine of the Story of King Horn, a popular saga which, like the Story of King Havelok, was probably first written down in the early thirteenth century. Horn was the son of King Murry of Suddene, who was spared for his beauty when the Saracen pirates plundered the land and killed his father. Horn was set adrift in a boat with twelve companions and ultimately came to the land of Westernesse, where he became the servant of its king Ailmar, whose daughter, Rimnild, fell in love with Horn and persuaded her father to make him a knight in order that she might win his love. The rest of the story describes the hard fortune of Rimnild and the bravery of Horn, who at last rescued her from her enemies and made her Queen of Suddene, which he had regained.

— 4. *Sennachies of the Gael.* A Sennachie, or Seannachie, was a Highland Bard or Minstrel, such as those who are supposed to have sung the achievements of Ossian. [See *A Scots Dialect Dictionary*, published by Chambers, London, 1911.]

— 5. *Duan of Albania.* Robertson [*Scotland under Her Early Kings*, vol. I, p. 20] calls this "the oldest known genealogy of the Early Kings of Scotland." [See Skene, *Celtic Scotland*, vol. I, p. 184.] Duan is a Gaelic word for poem or

canto and first appears in English in Macpherson's *Ossian*, 1765. [See *N.E.D. sub voce.*]

p. **326**. 1. *Claudian.* The last of the Roman poets. He flourished under Honorius, and Stilicho was his patron. One of his poems celebrates the marriage of Stilicho's niece, and in another poem quoted p. 319, he refers to Britain. Claudian was by birth an Egyptian of Alexandria and died *c.* 404 A.D.

— 2. *Marcellinus.* The last Roman historian of any importance (*c.* 325–*c.* 391). Ammianus Marcellinus was a Greek by birth, and served in the Imperial Army both in the East and in Gaul. He was an enthusiastic admirer of the Emperor Julian, whose campaigns he describes. He wrote his history at Rome in his old age as a continuation of the work of Tacitus. Thirteen out of the thirty-one Books are lost, but the remainder, dealing with the period 353–378 A.D., are most valuable and, by their description of the deterioration of the army and the progressive exhaustion of the Middle Classes, unconsciously prophesy the coming disaster.

p. **328**. 1. *Thong-Castle.* Hengest, the Jutish Chief, begged from Vortigern enough land for a fortress, the area to be as much as he could encircle with a leathern thong. On his request being granted, he cut up a bullock's hide so as to form a single thong. By this stratagem he was able to obtain a strong natural fort which he had long coveted. The traditional site is Tong in Kent. The story is told by Geoffrey of Monmouth, bk. VI, ch. 11.

p. **330**. 1. *Mons Badonicus* or Mount Badon. Many authorities now follow Guest who in *Origines Celticae*, vol. II, p. 189, makes out a good case for Badbury Rings in Dorset as the site.

— 2. *Andredes Ceastre.* The Saxon name for Roman Anderida, probably to be found near Pevensey Castle, which is certainly built on the site of a Roman fortress. Anderida was built towards the end of the third century of our era as part of the defences of the Saxon Shore, and seems to have been repaired perhaps by Stilicho *c.* 400. A massive Roman wall still stands in very fair condition at Pevensey, although some antiquarians seek for Anderida at various neighbouring towns.

— 3. *Ella* or Ælla. Very little is really known about him. Bede is our chief authority and he makes Ælla the first Bretwalda, and perhaps hints that he was the real leader of the invaders. He died *c.* 514. For an ingenious reconstruction of his supposed achievements, see *The Storming of London and the Thames Valley Campaign*, by Major P. T. Godsal.

— 4. *Baronius.* Cardinal Cæsar Baronius (1538–1607), the famous ecclesiastical historian and Librarian of the Vatican under Clement VIII. The reference is to his *Annales Ecclesiastici*, written between 1588 and 1607 by order of his Superior, St. Philip Neri, as a reply to the Protestant *Historia Ecclesiæ Christi* (1559–1574), the earlier version of the famous Magdeburg Centuries. The *Annales* are on the whole trustworthy and never err from bad faith.

p. **332**. 1. *Querulous Gildas.* He is so called from the title of his book *Gildæ Sapientis de Excidio Britanniæ Liber Querulus*, in which he truly says he writes "by way of lamentation rather than for display." Stevenson, who in 1838 edited the *Historia* and the *Epistola*, says, "we are unable to speak with certainty as to his parentage, his country or even his name, the period when he lived or the works of which he was author." Actually, although he is the only Celtic historian of the Saxon Conquest, he is by no means trustworthy, and his work was for long suspected of being not genuine. We gather from his *Historia* that he was born in 516, that he was a cleric and spent a considerable time abroad, probably in Britanny; and the Cambrian Annals say he died 570. [See Ebert, *Allgemeine Geschichte der Literatur des Mittelalters*, vol. I, p. 562.]

— 2. *Maglocunus.* In Geoffrey of Monmouth, Malgo,—in Nennius, Mailcunus,—Maelgwn Gwynedd of North Wales. Gildas calls him the Dragon of the Island, and agrees with Geoffrey of Monmouth (bk. XI, ch. 7) in painting him as a fierce and successful warrior who disgraced his valour and personal beauty by unspeakable immoralities. According to the *Annales Cambriæ* he died in 547 A.D.

— 3. *Legends of Arthur in Sicily.* Gervase of Tilbury was an English scholar, born at Tilbury in Essex. He flourished *c.* 1200. After an adventurous and wandering life in France, Sicily and Germany, he became Marshal or Governor

of the Kingdom of Arles under the Emperor Otto IV. For his patron's delectation he wrote, about 1211, the curious work known as *Otia Imperialia*, full of the most astonishing stories. Excerpts are printed by Stevenson at the end of his Edition of Ralph of Coggeshall [Rolls Series, No. 66]. On p. 438 is the passage referred to by the author. It is also printed in Liebrecht's *Auswahl*, p. 12.

p. **332**. 4. *Childeric.* He is described in the *Otia Imperialia* as *ipsum ducem Germaniæ.*

— 5. *Aurelius Ambrosius.* The reference is to the battle of Mons Badonicus. See p. 330.

p. **333**. 1. *In the North.* Probably in the region between the two Roman Walls. The battle sites cannot possibly be identified now with any certainty, even if they are not legendary.

— 2. *Douglas, the black water of Deira.* Duglas in Celtic literally means the Black Water or stream. Skene [*Celtic Scotland*, vol. I, p. 153] places the site of this battle on the Douglas which flows into Loch Lomond. There is a Dunglas river which formed the southern boundary of Lothian and this is favoured by Giles. Whitaker, in his *History of Manchester*, identifies the stream with the Duglas near Wigan. The Wedale referred to by the author is identified with a village six miles west of Melrose. It is said to be really Woldale, *Vallis dolorosa*, where, according to one of the MSS. of Nennius, there were kept fragments of the miraculous image of Our Lady which helped Arthur to win his battles.

— 3. *City of the Legions.* This is generally identified with Chester, but, if a northern site is required, perhaps Carlisle may be intended.

— 4. *Caledonian Forest.* This is said to be Englewood Forest, which extended from Penrith to Carlisle.

— 5. *Forest of Broceliande.* This was a magic forest in Britanny, which appears in the Arthurian Romances. There it was that Merlin was enchanted by Vivienne, the Lady of the Lake, and imprisoned in a rock. The name Broceliande is used as the typical *mis-en-scène* of romance and an example of the unreality of legendary scenery.

— 6. *Geoffrey of Monmouth.* A writer of the twelfth century who in 1152 became Bishop of St. Asaph. His fame rests chiefly on the *Historia Britonum*, which he claimed to have translated from an ancient Welsh MS. No one accepts its wild impossibilities as sober history, but Geoffrey probably did work up old Celtic legends into his History, and it has been the source of much of the mediæval Romance writing.

p. **336**. 1. *Ancient Rampart.* Wodensdike or Wansdike is a large Roman or Romano-British entrenchment of uncertain date in Wiltshire, about 60 miles long, stretching from the neighbourhood of the Bristol Channel to a point a little east of Savernake. It shows best along the Marlborough Downs, and consists of a bank of earth with a trench on the north side. It is studded with forts at intervals, and was undoubtedly a defence rather than a mere boundary. There are other "dikes" in the neighbourhood, such as Botterley dike which is partly the boundary of Dorset and Wilts. Wodnesbeorg is Wanborough, near Swindon.

For the Rech dike or Giant's dike of East Anglia, see Part II, *Proofs*, pp. 554, 555.

p. **344**. 1. *Venta Icenorum.* Caistor by Norwich. [See the article by Prof. Haverfield on Roman Norfolk in the V.C.H. *Norfolk.*]

p. **345**. 1. *Rampart ascribed to the Giant.* This is the Giant's Dike or Rech Dike. (See Part II, *Proofs*, pp. 554, 555.)

— 2. *London . . . lost to the Britons.* Coote, in his *Romans of Britain* argues ingeniously, if unconvincingly, for the survival of London as a purely Roman city at least down to the reign of Alfred. Major Godsal, in his *Storming of London and the Thames Valley Campaign*, represents it as falling at an early date before a joint attack of the invaders led by the Bretwalda Ella.

In any case it is difficult to believe that so important a city could be captured without leaving even a tradition behind, and the presumption of a continuous habitation of London is very strong.

— 3. *Camulodunum.* The Roman Colony on the site of modern Colchester. Together with Londinium and Verulamium (see above, p. 590, note 1 to p. 125), it was sacked by Boadicea in the rising of 61 A.D.

p. **348**. 1. *Pictish Question.* See Guest, *Origines Celticae*, vol. II, pp. 28 ff.
p. **350**. 1. *History of St. Patrick.* See Dr J. B. Bury's *Life of St. Patrick and His Place in History*, London, 1905.
p. **351**. 1. *Erc* in Irish legend was king of Ireland and enemy of the hero Cuchulain. At the last battle of that hero, Erc seized one of his spears and wounded his celebrated horse, the Grey of Mechc, to death. Actually his historical importance lies in his relation to his more famous sons. [See Skene, *Celtic Scotland*, vol. I, pp. 139 ff., and Pinkerton, *History of Scotland*, vol. II, p. 89.]
p. **356**. 1. *The Flame Bearer.* It was Theodric, the son of Ida, who was called by the British writers, Flamddwynn, the Burner.
p. **357**. 1. *Dol.* Now a small town in North Britanny, near St. Malo, in the *département* of Ille et Vilaine, it was an important Armorican settlement.
p. **360**. 1. *Denisesburn.* This is said to be the Rowley Burn, a tributary of the Devilswater which flows into the Tyne near Corbridge. The Welsh name for the battle is Catscaul. (See Part II, *Proofs*, p. 569.)
p. **362**. 1. *Maserfelth* or Maserfield. The site is unknown, but is perhaps near Oswestry in Shropshire.
p. **379**. 1. *Cunedda Wledig.* See Part II, *Proofs*, p. 614.
— 2. *Days of Giraldus.* Giraldus was Giraldus de Barri, also called Cambrensis or the Welshman (?1146–?1220). He was the youngest son of a Norman Knight by the daughter of a Welsh princess. A keen patriot, he passed his whole life in one long struggle to become Bishop of St. David's and to assert the independence of the Welsh Sees from Canterbury.
p. **388**. 1. *Deunsetas.* The river intended here is the Wye and not the Exe. See above, p. 585, note 1 to p. 80, and Part II, *Proofs*, p. 446.
p. **396**. 1. *Places unknown.* Dunfoder is probably Dunnottar in Kincardineshire, and Wertermere, Kirriemuir in Forfarshire. [Skene, *Celtic Scotland*, vol. I, pp. 338, 352.]
p. **398**. 1. *Lothian*, strictly speaking, is the three counties of Linlithgow, Edinburgh and Haddington.
p. **399**. 1. The *Carse* is the belt of fertile alluvial land around Falkirk, and lies just west of Lothian proper.
p. **400**. 1. *Eadulf, the cowardly Earl of Northumbria.* See Appendix on the Cession of Lothian in Freeman's *Norman Conquest*, vol. I.
— 2. The *Merse* is the March or Borderland of South-East Berwickshire.
p. **403**. 1. *Mr Tytler.* Patrick Fraser Tytler, the friend of Alison and Scott and one of the founders of the Bannatyne Club. The reference is to his History of Scotland published 1828–1843. Tytler was a barrister as well as an historian.
p. **404**. 1. In connection with this Chapter the author's *Documents and Records illustrating the History of Scotland*, published by the Record Commission in 1837, should be consulted.
p. **406**. 1. *Marculfus.* The reference is to the *Formulæ Marculfi*, the work of the monk Marculfus who, in 650, compiled, for the use of the Merovingian Court, a "formulary" or series of model state documents or diplomata, which survived with only slight alterations into early Carlovingian times.
p. **410**. 1. *Alcuin* (*c.* 735–804), who liked to call himself Albinus, was one of the most learned ecclesiastics of the eighth century. He was born at York, and was a relation of St. Willibrord of Utrecht. He was educated at the Episcopal School at York, of which he became head master in 766. Returning from Rome in 780 he met Charlemagne at Parma, who persuaded him to settle at his court and heaped preferment upon him. From 781 to 790, Alcuin ably carried on the task of reorganizing the educational system of the Franks. At least twice he returned to England for short periods, but Charles needed him to combat heresy by his learning and he finally died in France as Abbot of St. Martin of Tours. He is a chief actor in the Carlovingian Renaissance.
p. **414**. 1. *Female reign of Irene.* Irene was the wife of the Eastern Emperor Leo IV, and mother of Constantine VI, whose eyes she had put out for opposing her will. She was a strong supporter of image-worship. It is said that she proposed to marry Charlemagne and that, when he refused, she broke off the marriage contract between his daughter and her son. After five years of prosperity, she was deposed and exiled by Nicephorus, her Minister of Finance.

p. **417**. l. "Those assenting shouts and that crown were regarded as having *revived* the empire of the West after a *break of three hundred and eighty years, dating from the deposition of Augustulus.* If the expression 'Roman Empire,' after *such a lapse of time*, still suggested to the peoples of Europe conceptions of splendour and supreme authority, that was no empty flattery which renewed the title of emperor to bestow it on Charlemagne. Charles, by taking the imperial crown, adopted, after a fashion, the storied past of Rome and the Empire. He proclaimed himself the embodiment of an ancient civilization, of social order, of lawful authority, and renounced thenceforth the representation of the barbarian conquerors who based their rights on the sword."

p. **429**. l. *Cassiodorus.* Flavius Magnus Aurelius Cassiodorus (*c.* 490–585) was the son of an official of Odoacer, who subsequently joined Theodoric. Cassiodorus himself became one of the chief advisers of Theodoric and held office under the Goths, till the entry of Belisarius into Ravenna about 540. He was famous as a historian and as a statesman, and is sometimes said to have been a member of the Order of St. Benedict. The precept quoted is from the *Variæ* published in 537. They were a series of twelve Books containing Letters, Formulæ, and Rescripts issued by him in the name of Theodoric and other Gothic Rulers. As a historian, he showed marked partiality to the Goths.

p. **434** l. *Heruli.* They were a German tribe perhaps, as Jordanes says, originally driven south by the Danes. From the time of Gallienus (260–268), they helped the Goths in their raids on the Roman Empire and later became mercenaries. Theodoric tried to obtain their alliance against Clovis, but soon afterwards they were utterly defeated by the Lombards, and they disappeared as a separate people about the middle of the sixth century—heathen to the last. Heruli is probably connected with Eorl, noble.

p. **435**. l. "The only right which the bestower of a benefice possessed—a right which was not disputed—was that of withdrawing his gifts for breach of fealty, treason, rebellion and every other act by which the vassal did injury to his chief, instead of service. Such was the principle which governed their relations, a principle vague, without guarantees, lending itself readily and easily to abuse in days when force was almost the only arbiter in all matters."

p. **436**. l. *Treaty of Andelot.* By the Pact of Andelot, King Gontram of Burgundy and Childebert, King of Austrasia, assured the continued possession of all royal dotations which they, or their predecessors up to the death of Clothaire I, had bestowed on their faithful followers or the Church [Gregory of Tours, ed. Poupardin, lib. IX, c. 20; Lavisse, *Histoire de France*, vol. II, p. 145]. The edict of Clothaire II restored all the royal dotations which had been forfeited in the civil war.

p. **437**. l. *Precepts of Charlemagne.* See Part II, *Proofs*, p. 742.

p. **438**. l. *Præceptum de Læsiwerpo.* See Part II, *Proofs*, pp. 742 and 749.

p. **441**. l. "The Franks in their monarchy did not recognize the principle of hereditary succession, save in connection with the throne. They thought they had given more stability to their institutions by withdrawing the highest dignity in the state from contests of ambition and the violence of faction, but, with the exception of the royal office, *all others* must be reserved for the worthiest candidate. *They did not recognize an order of nobility*, their dukes and counts were elective, their generals were chosen by the soldiers, their higher judges or mayors by the body of freemen, and *no man was permitted to hold from his ancestors any power over his fellow citizens.*"

p. **446**. l. "That a count could be deprived of his office is attested by all the documents of the First Race. The formula of Marculf for the conferring of this function proves it directly."

p. **447**. l. "Commending himself in vassalage with his hands, he promised fealty to King Pepin, etc. even as a vassal with upright intention and unwavering devotion ought by right to be towards his superior."

p. **448**. l. "by wand and staff."

p. **454**. l. "From the reign of the grandsons of *Clovis*, the nation had let fall into disuse the councils in which it had, in former days, decided questions of peace and war, of laws and government. The national assemblies appear to have been in large measure abandoned under the last *Merovingian* kings. We

cannot assert that these assemblies were no longer convened, but during a long period we have no proof of their existence."

p. **455**. 1. *Bernay*. Berny-Rivière, *dépt*. Aisne.

p. **459**. 1. "*Pepin* and *Carloman* summoned the prelates to these assemblies, and the latter soon found themselves masters in them. By this single innovation, which a religious people saw no reason to decline, the constitution suffered a fundamental change and the *Champs de Mars* of the warriors became synods of bishops. As a result, the prelates introduced into these assemblies the use of the Latin language and the practice of long speeches. They brought before them all questions concerning the Faith, church discipline and controversy, matters of which the Frank soldiers could make nothing. Ignorant of the language of theology and of the forms employed by the prelates in their deliberations, their share in them became quite passive. Their rights were not in dispute, but they were driven away by sheer absence of interest from the very place where they had once been supreme. The prelates, who, without a revolution, without any perception on the part of the nation that it had lost its rights, found themselves all at once the holders of all legislative power as a consequence of the simple fact of their admission into the council of the warriors, did not fail to give their decrees a powerful sanction by reducing to a system the procedure of excommunication and its consequences."

— 2. "These assemblies were in essence Parliaments, and Councils only on occasion."

p. **464**. 1. *A Capitulary framed by the Emperor*, etc. See Lavisse, *Histoire de France*, vol. II, p. 313.

— 2. "This capitular is the work of Louis le Débonnaire, but we may, nay, *we must*, without fear of mistake, attribute to Charlemagne the institution of the provincial parliaments of which I am speaking. I wish to emphasize that no inference in opposition to my view can be drawn from the silence of the capitulars of Charlemagne with reference to these parliaments, since a considerable number of them has been lost and since we are far from possessing a complete collection of his laws or a full account of his administration. In the second place, it would be hard to believe that the provincial parliaments were instituted by Louis le Débonnaire. In the fourth chapter of this book, it will be seen that this institution is not of a piece with the general line of conduct of this prince, or, at any rate, with the policy of those who directed him."

p. **468**. 1. "There are stages in the progress of civilization, periods when society is incapable of attaining to a national unity, when it possesses neither the knowledge nor the aims, nor the springs of action which create, out of a mere throng scattered over a wide territory, a single people united under the same laws, living the same life and stirred by the same motive principle.... What ideas, what connections, what common aims could cement and maintain it? The only society possible in those days is a society strictly limited and bounded, like the mental outlook and the manner of life of its members. And if, as the result of some weighty event, of some passing influence, a society less limited is formed for a moment, it is soon seen *to break up*, and, in its place, *there arises a number of little societies* proportioned to the stage of development of their members, which soon produce, each within its own limits, a government suited to their culture. Such is the phase which *began to run its course in France after the death of Charlemagne*, which had for its *goal* the establishment of the feudal system."

p. **469**. 1. *Boulainvilliers, Henri, Comte de* (1658–1772), was a French political writer whose historical writings were marked by an enthusiastic admiration for the feudal system. He attacked impartially the claims of absolute monarchy and democracy and maintained that the nobles alone should rule.

— 2. *Montlosier, François Dominique de Reynaud, Comte de* (1755–1838), was a Royalist member of the Constituent Assembly in 1791, but emigrated in the September of that year. Afterwards he returned and took service under Napoleon. The allusion in the text is to his *De la Monarchie Française*, which displeased Napoleon by insisting on feudal limitation of the royal authority. Under Charles X, he became anti-clerical and died out of communion with the Church.

— 3. "Charlemagne had endeavoured to make himself the sovereign of a *great*

people and a great empire; the civilization of the country would not lend itself to this attempt, and none of his successors was capable of conceiving the idea. Under their rule, the administration and the governed suffered *a gradual disintegration, a progressive dissolution.* Soon there was no longer king *or nation.* Each land-owner, who had a free hand and power, *made himself supreme* within his domains, each count, marquis or duke in the area where he had *represented* his sovereign. It is idle to inquire whether that was for good or evil, lawful or lawless; it was the necessary consequence of the condition of men and things; it was the universal effort of society *striving to take shape and unable to expand beyond narrow bounds.* Authority and the *nation disintegrated,* because a single authority and an *united nation* were impossible; everything became localized, because nothing could be centralized, because all community of interests, of existence and ideas had disappeared. Law and its administration, the maintenance of order, wars, oppression and liberty, *every energy was confined within small areas,* because within a larger compass none could be organized or maintained. When this violent agitation among diverse social conditions and authorities, which extended all over France, had done its work, when the *small societies which inevitably rose from it* had, both for good and for bad, taken a shape approaching in some measure to system and definiteness, the hierarchic relations which united them, the result of conquest and the re-birth of civilization, took the name of the feudal system."

p. **469**. 4. "The King cannot administer justice in the Baron's territory without his consent, any more than the Baron in the territory of his vassal tenant." The sentence preceding this extract from *Les Établissements de St. Louis* is "Bers si a toutes Justices en sa terre" [The Baron is the sole administrator of justice in his territory], which shows the meaning of *mettre ban* (lit. to make proclamation) in this place.

p. **470**. 1. "As long as France was a confederation under the feudal system, the power of making laws was in abeyance. Hugh Capet and his successors up to the accession of St. Louis had no right to make laws, the nation had no diet, no assemblies regularly organized, the authority of which was recognized by it. The feudal system, adopted and developed tacitly by custom, was the only system recognized by the numerous supreme authorities which divided the provinces between them. For them it held the position of social bond, of monarch and legislator."

p. **471**. 1. "Was that a free government? Assuredly not, for we do not discern in it any institution independent and subsisting by itself, any driving power of society attaining to open expression and permitted to put a peremptory limit to the will of the sovereign. Still it was not, on the other hand, a despotic régime, since the maintenance of order meant for the weak a much larger liberty than they had previously enjoyed, and as for the powerful, Charlemagne, by putting constraint on himself to listen to their advice from time to time, with a view to controlling them and making use of them, accepted the necessity of submitting often to their influence. Hincmar extols the exactness with which whatever had been agreed upon in the general assembly was upheld and carried out.

What was then the character, on the whole, of his government? A great and noble performance, the transitory achievement of the dominance of one man, a short-lived triumph of the monarchical system, due solely to the genius and commanding influence of the monarch, who did not and could not, by means of institutions, establish either the liberties of the people or royalty, but who, summoning the nation to assist him to be really a king, was able to stamp for a moment on the people and on his rule the unity of his ideas and his will."

p. **472**. 1. "It is true that the Champ de Mai possessed the power of legislation, but, if we pay close attention, it was only somehow *in a precarious fashion,* because the extreme ignorance and the failings of the French *did not allow Charlemagne to divest himself* of some portions of executive power. Those which he would not have kept in his own hands would have been badly administered, and would have become a hindrance to his plans."

— 2. "A fresh cause of the impending decay of the government was the fact that the assembly of the Champ de Mai was not limited to *any fixed and invariable form in its methods of deliberation and procedure* in the enactment of laws. So

far as one can guess with the help of our ancient records, it often anticipated the prince and begged him to attach the royal seal to the regulations it had drawn up. Sometimes the prince himself put before it a law and demanded the consent of the nation thereto. Now the three estates of the realm drew up their articles apart, now they joined to produce an ordinance in concert. It does not appear that there were fixed dates for adjourned deliberations on the same subject. Some laws were passed only after several long debates, others were proposed, accepted and published on the spot, as it were by acclamation.

Charlemagne had permitted this *undefined* sort of procedure in the Champ de Mai to persist, because *the crass ignorance* of the French *did not allow of his* keeping them in session without his supervision and direction of their proceedings, and formalities, by embarrassing him, would always have stood in the way of utility. Besides, the necessity which obliged him to pass from one frontier to another of his vast empire, leaving him at liberty to hold an assembly only for a short time, made it imperative to settle the business quickly, and the genius of Charlemagne decided in a moment difficulties which formalities would have rendered more embarrassing, and which his subjects could never have solved."

p. **473**. l. "Our States became General only by the coalition of the separate states of each seneschalsy, which assembled separately at first and having combined afterwards composed a single body."

p. **474**. l. *Count Raymond.* This was Raymond VII (r. 1222–1249). Under his father, Raymond VI, heresy had been favoured, but the Albigensian heretics had been destroyed or forcibly re-converted by the elder Simon de Montfort, who had fallen in an attempt to recapture Toulouse in 1218. Raymond VII had to renounce heresy to regain his lands.

p. **475**. l. *The Tribes of Galway.* The Norman family of Burke or De Burgo obtained the City of Galway after the English Conquest, and when the walls were built, about 1270, encouraged settlers to develop its commerce. The fourteen chief families of Saxon, Norman and Welsh descent were known as the Tribes of Galway, and haughtily disdained marriage with the other inhabitants. The town flourished until the Civil War, but in 1641 the ancient inhabitants were expelled, for the most part in favour of English adventurers and disbanded soldiery, who alone retained civil rights after the war of 1688.

p. **477**. l. "The history of the great feudatories, much more powerful than the king himself, if we had documents sufficient to write it, would be the history of France."

p. **489**. l. *Ella . . . Bretwalda.* See pp. 330, 331, and Part II, *Proofs*, p. 469, esp. note b. The authority for the list in note d is Bede, bk. II, c. 5.

p. **497**. l. For the interpretation of this extract, see Skene, *Celtic Scotland*, vol. I, p. 396, and Liebermann, *Ueber die Leges Anglorum*, p. 4.

p. **499**. l. *Billingham*, near Stockton.

p. **501**. l. *John Selden.* See above, p. 590, note 1 to p. 129. Probably the reference is to his *Privileges of the Baronage*, published in 1642.

— 2. *Spelman.* Probably the reference is to *Tenures by Knight Service*, written by Sir Henry Spelman (1564–1641), an historian and antiquary who founded a short-lived Anglo-Saxon Readership at Cambridge in 1635.

p. **505**. l. *Mancusas.* The mancus was money of account, equal to thirty pence.

— 2. *Husting.* House assembly, meeting of retainers. Hence it got the meaning as here of a formal meeting of the King and his courtiers, corresponding to the Anglo-Saxon Witan.

p. **509**. l. *Their folk-lands of an inferior degree.* Here the author is contrasting the lands held by custom or folk-right as opposed to the rights acquired by a boc or Royal grant. It is interesting to find that on pp. 693 ff. of Part II, *Proofs*, he so nearly anticipates the reasoned conclusions of modern scholars that Bocland need only be originally the right to receive the King's dues from the folk-land or odal-land of others whose own rights to their actual land are unaffected, so long as they pay dues to the holder of the Boc or Charter. However pestilence and war had done their work long before the Norman Conquest and most land was held from a mesne lord, often on oppressive conditions.

— 2. *Work-lands.* Lands held by service of week-work. In the Customs of

Tidenham [Birch, *Cart. Saxon.*, no. 928] the *genēat* and the *gebūr* are specified as performing this *weorcrāden*.

Swilling-lands connote the tenure mainly of Kent, where the *sulung* was a division of land corresponding as a fiscal unit to the hide or carucate elsewhere. See *N.E D. s.v.* Suling, where Swilling-land, a plough land, is quoted from Parish and Shaw, *Dict. Kent. Dialect. Ber-lands*, holdings of the *gebūr*, the *colibertus* of Domesday. *Bord-lands*, tenements of the bordar or cottier.

p. **512**. 1. *Obertus.* Obertus ab Horto, a lawyer who practised at Milan about the middle of the twelfth century and wrote on Benefices. His authority is often cited in the Book of Feuds.

— 2. *Bartholus* (1314–1357). Professor of Civil Law at the University of Perugia, where he raised the Law School to a level with that of Bologna. His most famous work is his *Commentary on the Code of Justinian.*

— 3. *Baldus.* There were three brothers of this name in the fourteenth century, all eminent as jurists, the best known being Petrus Baldus de Ubaldis of Perugia, and a student of Civil Law under Bartholus. He won great fame among his contemporaries and took an active part in public life. The reference in the text is to his *Commentary on the Liber Feudorum*, one of his best works.

p. **515**. 1. *West Wales.* The Celtic parts of South-West Devon, Cornwall, etc., originally separated from the rest of Celtic Britain by the battle of Dyrham, 577 A.D.

p. **519**. 1. *Baccanceld.* Bapchild, near Sittingbourne, in Kent. [For this document see Haddan and Stubbs, *Councils*, vol. III, p. 244.]

p. **521**. 1. *Cild or Child . . . equivalent to Atheling.* Cild is translated by Florence as Minister, and by Henry of Huntingdon as *Puer Nobilis.* Atheling is strictly used only of Royal Princes, such as Edgar Atheling.

Mr Freeman carefully discusses the alleged connection between "Cild Wulfnoth" and Earl Godwin, without coming to any definite conclusion. The difficulty is that Godwin is sometimes alleged to have been also nephew of Eadric Streona, and the double relationship seems impossible. Other legends make Godwin son of another Wulfnoth of much less exalted rank. [See Freeman, *Norman Conquest*, vol. I, Note F, pp. 636–646, and see *D.N.B. s.v.* Godwin.]

p. **522**. 1. For Ch. XX generally, refer to the author's *Documents and Records illustrating the History of Scotland*, 1837, Record Commission, and Part II, *Proofs*, pp. 614 ff.

p. **527**. 1. *Glastonbury charter.* The reference is to the occurrence of Oswald as Archbishop of York in 971 A.D., although according to the usual reckoning he did not obtain the see till the following year. (See Part II, *Proofs*, p. 395.)

p. **528**. 1. *Florilegus* or *Matthew of Westminster.* The imaginary author of *Flores Historiarum.* In an article first published in the *Quarterly Review* of 1826 (XXXIV, 1) and now included in volume IX of this series, the author described him as a "phantom who never existed," and this verdict was accepted by Luard in his edition of the *Flores* (1890), which are really chronicles partly compiled and partly composed by writers at St. Albans and Westminster. The name Matthew of Westminster comes from a fifteenth century MS. of the Chronicles.

— 2. *Brompton.* John of Brompton (*fl.* 1436), a mediæval chronicler and abbot of Jervaulx. The Chronicle attributed to him contains many local details and treats of events from the coming of Augustine to the death of Richard I.

— 3. *John of Wallingford* (d. 1258). The compiler or transcriber of a Chronicle of the years 449–1073 A.D. He was a monk at St. Albans.

p. **530**. 1. *Saxonia.* The Non-Celtic Lowlands, such as the Lothians.

p. **535**. 1. *Castle of Maidens.* Edinburgh Castle, the *Castellum Puellarum* of Geoffrey of Monmouth, bk. II, ch. 7.

p. **540**. 1. *Locrine, Albanact and Camber.* The three sons of Brutus the Trojan, founder of New Troy or London. [See Geoffrey of Monmouth, bk. II, ch. 1.] They gave their names respectively to Lloegria (England), Albania (Scotland) and Cambria (Wales).

— 2. *The Egyptian Princess Scota.* A daughter of Pharaoh and given in marriage to Gathelus, son of Cecrops, King of Athens, in return for help against the Ethiopians. He was a friend of Moses and led another Exodus of Greeks

and Egyptians to Scotland via Spain, bringing the Stone of Destiny in the Year of the World 2453.

p. **540**. 3. *Gregory the Great, son of Dungal* (d. 889). He is also called Girg and in Latin lists Grig. Skene makes him fifth King at Scone. He succeeded Aedh, 878 A.D., and was associated with Eocha, with whom later he was expelled from his kingdom. He is said to have been a patron of the Church and to have conquered parts of the Anglian Kingdom of Northumberland, but little really is known about him.

p. **541**. 1. *John Harding* or Hardyng (1378–? 1465). A mediæval chronicler attached first to Hotspur and later to Sir Robert Umfreville. He was present at the battles of Homildon Hill and Agincourt. The reference in the text is to the grant of lands he received for producing obviously forged documents in order to prove the feudal subordination of the Kings of Scotland to England. Hardyng's original Lancastrian Chronicle ended in 1461, but he afterwards presented a Yorkist version to Edward IV reaching to 1465.

p. **545**. 1. *Torphin, Earl Harold's son.* Harold or Harald was the Norse Earl of Caithness, who also held the Orkneys from the King of Norway. In 1196 he seized Moray in defiance of William the Lion. Many cruelties were committed by both sides. Harald blinded the Bishop of Caithness and cut out his tongue, because he helped the rival Earl Ronald. [See Lang, *History of Scotland*, vol. I, pp. 116, 117, and Robertson, *Scotland under her Early Kings*, vol. I, pp. 400–413.]

p. **546**. 1. *Battle of the Harlaw.* This was fought in Aberdeenshire in 1412 when Donald, Lord of the Isles, was captured in a rebellion against the Regent Albany. [See Tytler, *Hist. of Scotland*, vol. III, p. 177.]

p. **547**. 1. *Rageman-Roll.* The word is of uncertain origin. The Rageman Rolls are the collection of Instruments in which is recorded the homage done by Balliol and the Scottish nobility to Edward I in 1296. This Roll has been printed both by Prynne and by the Bannatyne Club. [See Calendar of Documents relating to Scotland, vol. II, and *ibid.* p. xxiv, London, 1884.]

p. **552**. 1. *Trading Gilds.* The reference is to the mediæval Craft Gilds. Some modern scholars do not accept the theory of any direct filiation between the Roman *Collegia* and the Craft Gilds, at least in England.

p. **555**. 1. *Hagæ*, lit. places fenced in, and so dwelling houses.

p. **569**. 1. *The monk Hadrian.* He was a learned Campanian monk of African descent to whom Pope Vitalian offered the See of Canterbury. After some difficulty the Pope agreed to accept his friend, Theodore of Tarsus, on condition that Hadrian accompanied him to England and vouched for his orthodoxy. On the way, as the winter was severe, Theodore remained with Agilbert, Bishop of Paris, and Hadrian was arrested by Ebroin, Mayor of the Palace, and only released on the intervention of King Egbert of Kent. Hadrian finally became abbot of St. Augustine's. [See Bede, bk. IV, ch. i.]

INDEX

This index is intended to be used with the *Table of Contents*. The pages on which a subject is discussed can be quickly found by means of the index; these pages can be traced in the *Contents* where the matter has been fully analysed.
The figures in italics indicate that there is a note on the subject of the heading at the end of the volume.

Abbots, elected by king's consent, 141
Abercorn, monastery of, 393
Aberffraw, 383
Abernethy, 373
Abingdon, monastery of, 127 *n.*, 135, 142; monks of, 209
Acca, daughter of Ella, 357
Acrisius, King of Argos, 84
Adalides, election and investiture of, 104; qualifications for, 104–105; 249, *587*
Adda, *Comes* of South Burton, 511 *n.*
Adilberga, wife of Ethelbert of Kent, 130, *591*
Adrian I, Pope, 409 *n.*, 411 *n.*
Æ or *Æwa* (customs or common law), 34
Aedh, King of Scots, 395 *n.*
Aegelwy, Abbot of Evesham, 165 *n.*
Ælfere, Ealdorman of Mercia, 496
Ælianus, leader of the Bagaudi, 308
Æneas of Troy, 263
Æsc. *See* Eric
Æthelric, King of Bernicia, 357
Africa, 76, 265, 306
Agdeness, 107, *588*
Agenhine (Agen hyne), 16, 158, *580*
Agilolfings, the, 442, 447, 483
Agricola, Cnaeus Julius, 294 *n.*
Agrimensor, the, 76, *585*
Aidan, King of the Scots, 335, 367
Aids, paid to Frankish kings, 458
Aix-la-Chapelle, Councils of, 420 *n.*, 458 *n.*, 463
Alan the Red, Count of Britanny, 530 *n.*
Alani, the, invade Britain, 320
Alaric II, King of the Visigoths, 34, 278; *breviarium* of, *582*
Alban, St, 125
Albanach, son of Brute, 355, 540, *607*
Albania (Scotland), 317, 345, 355, 497 *n.*, 607
Alchfred, son of Oswio, 362
Alcinous, King of the Phæacians, 86
Alcluid (Dumbarton), 362, 365, 366, 379, 394
Alcuin, Abbot of Tours, 410, *602*
Alderman. *See* Ealdorman
Aldhelm, Bishop of Sherborne, 569
Aldred (Ealdred), Archbishop of York, 142
Aldwulf, King of East Anglia, 139
Alemanni, the, 21, 31, 262; settle disputes between Septs by champions, 181; in the Carlovingian empire, 420
Alexander the Great, 19
Alexander, Lord of the Isles, 546 *n.*, 547
Alexander I, King of Scots, 376, 527
Alexander II, King of Scots, 402 *n.*
Alexander III, King of Scots, 525
Alexander Severus, Emperor, 272 *n.*, 290
Alexandria, 271 *n.*, 286
Alfred the Great, King of England, 25, 36–38; his doom-book, 37; 40, 128, 197; makes survey of the kingdom, 221; 383, 396; and the Danes, 494; recovers Mercia from the Danes, 496; treaty with Guthrum, 497, 499; 536 *n.*, 570 *n.*
Alfred, opposes Athelstane, 487 *n.*
Alfric, Ealdorman of Mercia, 496
Alfsi (Elfsig), Bishop of Durham, 398
Alfwine, Abbot of Ramsey, 571
Algar (Aelfgar), Earl of Mercia, 573
Alienation of land, 438
Allectus, Emperor, 312–313
Allegiance, oath of, 165, 385
Allen, John, cited, 501
Allodial land (Odal), 76, 181, 438, 451, 482, 502
Almenning, common land, 74, 76, 77
Almocaden, the, 105, 249, *588*
Almogavares, 105, *587*
Alne, the river, 365
Alpin, King of the Picts or Scots, 394
Alps, Maritime, 277 *n.*
Alwyn, Bishop of Winchester, 143
Amandus, leader of the Bagaudi, 308
Ambacti, 17, *580*
Amiens, 292
Amobreu (Mercheta), 54
Amphictyon. *See* Pylagoras
Amphictyonic League, the, 84, *585*
Anarawd, son of Roderick the Great, 382, 383
Anastasius, Eastern Emperor, 299
Andelot, Treaty of, 436, *603*
Anderach, Prince of Cumbria, 371
Anderson, James, cited, on Scottish dependence, 527, 544
Andragathias, General of Maximus, 317
Andredes Ceastre (Anderida), 330, *600*
Androclus of Athens, 85, *586*
Anesty, Richard de, 573 *n.*
Angevins, the, 470
Angles, the, 21, 30, 33, 335; laws of, 33. *See also* Anglo-Saxons

Anglesey, 381
Anglia, 30
Anglo-Saxon Chronicles, the, 222, 325, 331
Anglo-Saxon Church. *See* Church, the Anglo-Saxon
Anglo-Saxon jurisdiction, complicated by local and personal authorities, 68; original and appellate in the shire-moot, 96
Anglo-Saxon jurisprudence, 147–257; development of, after the Conquest, 195–257; the position of king and counsellors in, 227–257
Anglo-Saxon law. *See* Law, Anglo-Saxon, Laws
Anglo-Saxon State, the, composition of, 51–110. *See also* Empire, Anglo-Saxon
Anglo-Saxons, the, castes or classes among, 7, 161; descent of their rulers, 8; traditions of, 19–20; ceorls of, 20; did not extirpate Britons, 21; vassalage among, 23; "law of promotion" of, 24; survival of policy of, 25; a Belgic population, 31; no legal records among, 116; and the British Church, 123; druidical faith survives among, 125; obscurity of early history of, 323–326; attack and conquer Britain, 334–342; disunion and lack of national feeling among, 335, 357–358; flee to Scotland, 482
Anian Breviary, the, 278, *582*
Anlaf (Olave), Danish chieftain, 366, 395 *n.*
Anlaf the Dane (Olave), King of Northumbria, 369 *n.*
Annandale, 366
Anne, Queen, 522
Antoninus Pius, Emperor, 294 *n.*
Antrustion, the, 431–432, 434–436, 446. *See also* Vassal, Vassus
Antrustionship, 449; extension of the principle of, 452–455; duties of, 504; 510
Aquae solis (Bath), 288, *597*
Aquitaine, 458 *n.*
Aquitania, 277
Aquitanians, the, 452
Arbogast, Salic judge, 301
Arcadius, Emperor, 281 *n.*, 293
Archives, non-existent among Anglo-Saxons, 116
Arezzo, 75
Argyle, 350, 352
Argyle, Earl of, position of, 449–450
Ariovistus, 299, *597*
Aristocracy, attainable by the people, 26
Arles, council at, 271 *n.*, 276–277, 284–285, 286, 288, 297, 299, *596*
Armorica, 31; expels Roman magistrates and forms a commonwealth, 309; colonized by Maximus, 316; reinforces Britons against Saxons, 338, 356, 426, 482
Arthur, King, 312, 332–334, 363, 379, 489, 540
Arthur's Plough (Charles's Wain), 333
Asaland (Asaheim), 108
Ases, the, 83, 84, 482
Asetnysse (statutes), 34
Asgard, 108
Asia Minor, 85
Assart, the, 181, *593*
Assemblies, legislative, of the Carlovingian Empire, 476
Asser, Bishop of Sherborne, 383
Assize of Arms, 248
Assize of Clarendon. *See* Clarendon
Assize of Northampton. *See* Northampton
Assize, Record of the, 117
Assizes concerning real property, 184–185
Assizes. *See* Justices itinerant
Athanagild, King of Spain, 41, *583*
Athelheard, Archbishop of Canterbury, 411 *n.*
Atheling, the, 485, 495
Athelstane, Earl of East Anglia, 516 *n.*
Athelstane, King of Wessex, 15, 34, 38, 106, 155; enforces ancient laws, 159; 228, 256; expels Britons from Exeter, 342; at Brunnaburgh, 369; supreme over Welsh Britons, 383, 384, 386; relations with Scots, 396–397; 486, 487 *n.*, 522, 525, 551 *n.*, 561; Code of, 150, *583*
Athelstane, son of King Egbert, 495 *n.*
Athelwold, King of Northumbria, 140
Athens, commonwealth of, 86
Atla, King of the "Northfolk," 344
Attacotti, the, 319, 392
Attalus, King of Pergamus, 87
Attica, 86
Attila, King of the Huns, *lay of*, 324; *599*
Attleburgh, 344
Atwood, William, his book burnt, 523
Augustine, St, 34, 124, 126; obtains possession of Roman Churches, 131; 137; consecrates Welsh bishops, 138; call a conference of bishops, 379
Augustulus, Emperor of the West, 413, 417 *n.*
Augustus, Emperor, 289
Aulaf. *See* Anlaf
Aurelian, Emperor, 292, 305, 306
Aurelius Ambrosius (Aurelian), 326–327, 330, 332, 489, *601*
Aurum coronarium, the, 283
Aurum reginae, the, 573
Austria (the Pannonian March), 432
Autun, 314
Auvergne, 264 *n.*
Avars, the, 448
Avitus, Emperor, 277–278, 307, *598*
Avon, the river (Hampshire), 332, 337
Avon, the river (the Lower), 337
Aylesbury, 334 *n.*
Aylwin (Ethelwine), Ealdorman of East Anglia, 79, 95, 399

Baccanceld (Bapchild), Council of, 519 *n.*
Back-barend, 172, *593*
Bagaudi, the, revolt of, 307–309, 311
Baldus, the brothers, 512, *607*
Balliol, Gilbert de, 237 *n.*
Balliol, John, 525, 544, 548

Baltic Sea, the, 31, 482
Bamborough, 356 *n.*, 517
Banishment, 211
Barbarians, the, political union among, 110; invasions of, 320
Bardney, 136
Barmoot Court, 98, *587*
Barnstaple, 256
Barones Errantes, 239–240
Barons, 15; Norman, protected by English law, 195–196; 213
Bartholus (Bartolus de Saxoferrato), 512, *607*
Basileus, the title, and Charlemagne, 419; and Anglo-Saxon kings, 483, 495; significance of, 568. *See also* King, Sovereign
Batavia, 310
Bath, 144 *n.*; conquered by Saxons, 334
Bath and Wells, see of, 143
Battle, trial by, 179, 181–189, 216
Battle abbey, 237 *n.*, 562 *n.*, 573 *n.*
Bauer (Boor), 13, 165 *n.* *See also* Ceorls
Bavaria, and the Bavarians, 420, 442; succession in, 447; 451
Bayeux, 319, 474
Beandune, battle of, 337
Beauvais, 292
Bedford, battle of, 334 *n.*
Bede (cited), 30–31, 131, 326, 328, 352, 380, 381, 382, 398
Belgians, the, in Britain, 21, 31; tribes of, 31; geographical situation of, *ib.*; accept Roman customs, 31–32; territories of, overrun by Saxons and Franks, 474
Belgic Gauls, the, 31
Belgic language, the, basis of Anglo-Saxon, 21
Benefices, feudal, in Anglo-Saxon township, 52–53; among Anglo-Saxons, 67, 502–504; granted by Roman emperors, 67, 295; explanation of, 422–424, 432, 435–437, *583*. *See also* Feudalism, Laen, Military Tenure
Beneficiary system, the, extension of, 452–455, 506, 511
Beneficiary tenure, 421–428, 503; earldoms held by, 518, 519
Bensington, 334 *n.*
Beorhtric, King of Wessex, 410 *n.*, 412
Beorred (Beornred), King of Mercia, 136, 575
Beranbyrig, battle of, 336 *n.*
Berghamstede, 36, *582*
Bergher (Birger), King of Sweden, 91, *586*
Berkeley, monastery of, 128 *n.*
Berkshire, county of, 208
Ber-lands, 509
Berneich. *See* Bernicia
Bernhaeth, ruler of the Picts, 364
Bernicia, 355–356, 357, 359, 362; occupied by Danes, 395; 397; governed by Danes, 497–498; becomes an earldom, 498. *See also* Northumbria
Bertha, daughter of Charlemagne, 409
Bertha, Queen. *See* Adilberga
Berwick, 355 *n.*, 535
Beverley, 34
Bieda, Saxon leader, 21
Bile, King of Strathclyde, 368
Billingham, 499, *606*
Birlaw. *See* Burlaw
Biscay, States of, 79, 112
Bishops, status of, 95, 133; powers of jurisdiction of, 134; nominated by the king, 141
Bishops, Frankish, 32; attended provincial councils, 276–277
Bithynia, 87
Black Strangers, the, 366
Blanche, Countess of Champagne, 470 *n.*
Blecca, ruler of Lincoln, 359
Blegored the Wise, 97
Blethyn, Under-king of Wales, 29, 513
Blood-fine, 64, 168. *See also* Were
Boadicea, 261, *596*
Bocland, 504
Bologna, 544
Bondes, 13; acquire land, 74, 75; rights of the, 76; 130; Scandinavian freemen, 482; *580*. *See also* Ceorls
Boniface, St, 128, 579
Bonosus, Emperor, 310 *n.*
Bordarii, the, 13, *580*. *See also* Cotarii
Border Law, 98, 526
Bord-lands, 509
Borges-ealdor, 249
Borh, 159, 161, 167
Boroughs, elective franchise in, 48. *See also* Burgh
Boulainvilliers, Henri de, 469, *604*
Boulogne, 311, 312, 419 *n.*
Bourbon, 89
Bracton, 186
Brancaster, 297, *597*
Brecheiniog (Brecknock), 380
Brehon laws, 35, *582*
Bremen, 32
Brennus, 87, *586*
Brenyn Cymri Oll. *See* Anarawd
Bretons, the, 470
Brets, the, 375
Bretwalda, the, 137, 228, 233, 331, 384, 489; assumes symbols of Rome, 490; title falls out of use, 494; authority of, confirmed by nation, 509
Breviarium of Alaric, the, 34, 582
Bribery, in judicial cases, 571, 572
Bridget, St, 403 *n.*
Brigantes, the, 347
Britain, 21; conquests of, 28, 30; under Roman rule, 259–264, 286–288; tribes in, 260–261; Roman works in, 264, 291; Roman military settlements in, 289–292, 295; Barbarian settlers in, 293; divided into 3 military provinces, 297; part of the empire of the Gauls, 305; emperors of, 310–318; connection with Armorica, 316–317; abandoned by Honorius, 320; union with the empire dissolved, 321; six northern tribes of, 347
Britannia Prima, 286

Britannia Secunda, 286
Britons (Welsh), the, and Anglo-Saxon conquest, 21, *581*; territorial organization of, 53–60; organized in tribes, 260–261; changes after Roman invasion, 262–263; tradition of Trojan origin, 263; retain Roman methods of war against Saxons, 336; subdued by Egbert, 382, 492; pay tribute, 384–385, 386; escape to Armorica, 482; confer title of Bretwalda on the Saxon Ella, 489; laws of, 28–34. *See also* Wales
Britons, in the East, obscurity of their history, 343
Britons, in the North, 339; Saxon conquest retarded, 345; tribes of, 346–347; retain Roman *burgi*, 354; 355–370; migrate to Gwynedd, 366; intermingle with Picts, 367–368; 374–377
Britons, in the West, their power broken, 337; rebel against Centwine, 338; emigrate to Armorica, 339; strength of, 341; ally with the Northmen, *ib.*; conquered but not exterminated, *ib.*; political power effaced, 342
Brittano-Hiberni, the, 351
Briwere, William. *See* William
Broceliande, 333, *601*
Bromdune, 176 *n.*
Brompton, John of, 528, *607*
Brunnaburgh, battle of, 369, 397
Brutus (British hero), 263, 540, *596*
Brycg-bot, the, 129
Burgage tenure, 270 *n.*
Burgarii, the, 292
Burgh, the Anglo-Saxon, 51; considered as a Hundred, 82, 83, *585*; connection with the Shiremoot, 96; sales only valid within, 156; name derived from *Burgus*, 291; position of, in kingdom, 552; early history of, lost, *ib.*; under Edward the Confessor, 553; lawmen of, *ib.*; elective magistracy, 554; royal property and rights in, 554–555; powers of, 556; probably formed federations similar to Hanse League, 566
Burghers, in Germany, 165 *n.*
Burghmoot, the, 83, 556
Burghs, the Danish. *See* Danish Burghs
Burgundians, the, 324, 452
Burhbot, 129
Burhred, King of Mercia, 127 *n.*
Burhware (Burgesses), the, 552, 553
Burlaw, 63
Burnell, Robert, Bishop of Bath and Wells, 252
Bur Thegn, the, 117
By-laws (*Bellagines*), 63
Byzantium, 414; influence of, in England, 568–569

Cacique, 68, *584*
Cadel, son of Roderick the Great, 382, 584
Cadiz, Cortes of, 112
Cadroë, St, 364 *n.*, 369 *n.*
Cadwalader Bhendyghed, 338, 340 *n.*
Caen, Abbot of, 208
Caer Isk. *See* Exeter
Caister. *See Venta Icenorum*
Caithness, 396, 497 *n.*, 545
Caledonia, 327
Caledonians, the, 260, 349, *595*
Camber, son of Brutus, 540, *607*
Cambray, 292
Cambria, 495. *See also* Wales
Cambridge, Hundreds of, 79; the folkmoot of, 207; 387 *n.*, 497 *n.*
Camulodunum, 76, 289, 345, *601*
Candida Casa. *See* Whithern
Canon law, its influence on Anglo-Saxon monarchy, 485
Canterbury, city of, 83 *n.*, 112 *n.*, 130, 537; ealdormen of, 553
Canterbury, see of, primacy of, 137, 491; 143
Cantred, British, 53; suggested origin of English Hundred, 77; 96–97
Cantware, the, 326
Cantyre, 350, 352
Canute the Great, 145, 233, 372; conquers the Scots, 400–401; 487, 505; appoints earls, 521; 529, 561, 570 *n.*, 576; laws of, 38, 39, 132, 151, 156
Capet, the house of, 574
Capitularies, 12, 241, 580
Capitulary, different from a law, 464
Cappadocia, 87, 426
Caracalla, Emperor, 263, 347 *n.*, *596*
Caradoc, King of Gwynedd, 381 *n.*
Carausius, Emperor, 310, 311–312, 489
Carcassonne, Mallum of, 463 *n.*; Estates of the Sénéchaussée of, 473
Carlisle, 365, 376
Carloman, son of Charles Martel, 8, 447, 458 *n.*, *579* 604
Carlovingian Empire, the, importance of its history for understanding Anglo-Saxon institutions, 406–407; institutions of, probably copied by Egbert, 413; individuality of component states of, retained, 419–420, 462, 476; reformed by Charlemagne, 433; territorial officials in, 439–446, 448; compared with modern Russia and Turkey, 444; beneficiary system extended among nations of, 452; general administration exercised by the *Placita* of, 459–478; not a nation, 469; misconceptions of, 471; main features of, reproduced during feudal age, 473; similarity of various legislative assemblies of, 476; its law lost under the Capets, 574
Carron, the river, 312
Carse, the, granted to Kenneth, 399
Carthage, 286
Cartismandua, 261, *596*
Cartmel, 365
Carucage, 224
Cassiodorus, 429, *603*
Caste, among Anglo-Saxons, 24
Castellum, the, 292

Castile, 18
Castlecary, 294 *n.*
Castlesteads, 294 *n.*
Catalonia, 422 *n.*
Catherine II, of Russia, 50, *583*
Catterath, battle of, 356
Cattle, chief wealth of Anglo-Saxons, 152; laws concerning, 153–156; sales of, 154–156
Ceadwalla, King of Wessex, 340 *n.*
Ceadwalla, British King, 359, 360, 361, 382
Cealchythe, Council of, 140, 485 *n.*, 486 *n.*, 560, *592*
Ceancinnith (Ceanfenne), 57, 58, 150, 400, 402, 444, 509
Ceawlin, Ruler of Wessex, 325 *n.*, 335–336, 489 *n.*, 587
Cecrops, King of Athens, 86
Celts, the, clans of, 57–58
Cenedyl, the, 55, 67
Cenred, father of Ina, 36, 325 *n.*, 340 *n.*, 386
Centena (Gau), 70
Centenarius, the, 18, 151, 268 *n.*, *580*. *See also* Centgrave
Centeneers, 100
Centgrave, the, functions and authority of, 72, 73
Centwine, King of Wessex, 338–339
Cenwealh (Coenwalh), King of Wessex, 337
Cenwulf (Cynewulf), King of Wessex, 140
Ceolric, nephew of Ceawlin, 335, 336 *n.*
Ceolwald of Wessex, 325 *n.*
Ceolwulf, Bishop of Lindsey, 411 *n.*
Ceolwulf, King of Mercia, 127 *n.*
Ceolwulf, King of Northumbria, 138, *592*
Ceolwulf, King of Wessex, 336 *n.*, 357
Ceorls (villeins), 9; rights of, 10; definition of, 13; services of, 14; without political power, 15; division of, into two classes, *ib.*; Anglo-Saxon and British, 20–21; origin of status of, 20–23; 67, 131, 150, 165 *n.*; have power to present criminals, 175; and compurgation, 176–177. *See also* Bondes
Cerdic, Ruler of Wessex, 21, 197, 329, 331; genealogy of, 325, 536 *n.*, *582*
Certic, British King of Elmet, 358
Chamberlain, the, preserves charters, 117; 505
Champ de Mai, the, 471, 605
Champ de Mars, 111, 454, 456–457, 458 *n.*, 604
Chancellor, the, 144–145
Chancery, the, origin of, 145–146, 232, 237; early stages of, 572; the Gothic, 268 *n.*
Chapel, the King's, used to preserve charters, 117
Charles le Chauve, Emperor, King of France, 435, 441, 452 *n.*
Charles the Great (Charlemagne), Emperor, 32, 72; dispenses freemen from attendance at courts, 111; maintains the privileges of the clergy, 128; 163 *n.*, 306, 324, 333; his influence in England, 407; relations with Offa, 409–410; receives Saxon refugees, 411; made emperor, 413–419; re-forms the empire, 433; Precepts of, 437, *603*; suppresses rebellion of Tassilo, 447–448; calls financial assemblies and accepts gifts, 457; administration through the *placita*, 460; controls the Mallum, 462, 464 *n.*, 468 *n.*, 604–605; 471, 472 *n.*, 491, 569
Charles Martel, 432, 447
Charles V, Emperor, 234
Charters (royal), deposited in King's Treasury, 117; signed by King's Chaplains, 143–144; of Henry I, 196; authenticity of, 527, 543; hellenisms in, 527 *n.*, 568; spurious, 541; of Edgar, 543; promulgated in the Witenagemot, 562. *See also* Landboc
Chelmsford, 83 *n.*
Chester, city, 333, 371, 381, 382, 400, 552
Chester, county, 81, 211
Chester, earldom of, 496, 515, 517 *n.*, 519 *n.*
Chichester, 287 *n.*
Chieftains (kings), 8
Child. *See* Cild
Childebert I, 302, *598*
Childebert II, 178 *n.*, 447, 455
Childeric the Saxon, 332, *601*
Chilperic I, 221, *595*
Chirograph, the, supersedes oral testimony, 119
Chivalry, development of, 503–504
Christendom's Balk, 115
Christmas, court held at, 232, 235
Chronicle, the Anglo-Saxon. *See* Anglo-Saxon Chronicle
Chroniclers, erroneously condemned as worthless, 528
Chronicles, Irish, 395 *n.*
Church, the, 243–244, 459
Church, the Anglo-Saxon, its rights decided in shiremoot, 96; not derived from British, 123; foundations and endowments of, 126, 130–132; exempt from secular exactions, 126–129; military and other services of, *ib.*; lands of, 126–137; indirect grants to, 130; division into provinces follows political division, 137; canons require secular confirmation, 140; abuses in, 141–142, 146; a bond of union in the state, 559–560; influences the theory of monarchy, 575–576
Church, the British, 123–125
Church, the Frankish, 459
Chyngellawr (Chancellor), 29
Cild (Child), title, 521, *607*
Cimbric Chersonesus, the, 31, 326, 357
Cinque Ports, the, 566
Circuits, six, or four, 241, 242
Cirencester, conquered by Saxons, 334
Cissa, ruler in Wessex, 135, 330, 340 *n.*, *591*
Cities, Anglo-Saxon, 552
"City of Legions," the. *See* Chester
Civil Law, the, 191–193; ratified by Alaric, 278; studied in England, 569

Civil Suit, 147–148
Clanship, existing among Britons, 261
Clarendon, assize of, enforces Frankpledge, 210; 240, 581, *594*
Classes (legal castes), 7; retained by clergy, 9; origin of, 16–17
Claudian, 319, 326, *600*
Claudius, Emperor, 262, 265, 272*n.*, 306, *596*
Clawdh Offa. *See* Offa's Dyke
Clergy, the, in Gaul, 17; withdraw from secular courts, 66; in Isle of Man, 100; in Guernsey and Jersey, 101; develop separate Convocation, 121; privileges of, 127–130, 131–132, 134; creation of parochial, 131; in the Frankish empire subject only to Roman law, 132; in England subject to civil code, 133; internal jurisdiction of, *ib.*; oaths of, *ib.*; anxious to acquire land, 135; lands lost during conquests, 135–136; lands restored by Edgar, 136; failings of, 146; legislative and administrative functions of, in Frankish empire, 458–459
Clerks of the Chapel, 572
Clitheroe, battle of, 348
Clodius, Publius, 272*n.*
Clothaire I, Frankish King, 302, *598*
Clothaire II, Frankish King, 178*n.*; Edict of, 436, 603
Clovesho, Council of, 127*n.*
Clovis, King of the Franks, 21, 298, 300, 309, 423, 424*n.*, 441, 456
Clydawc, British King, 383
Clyde, firth of, 138, 525; the river, 364
Clydno, British King, 28, *581*
Codrus, King of Athens, 85
Coel, father of Helena, 313
Coenbyrht of Wessex, 340*n.*
Coenwulf (Kenulf), King of the Mercians, 127*n.*, 558*n.*
Cogidumnus, British chief, 265, *596*
Coifi (Chief Druid), 125
Coit Caledon (Caledonian forest), 333
Colchester, 83*n.* *See also* Camulodunum
Coliberti, the, 580
Colleges (gilds), of operatives, 271–275, 552
Colonies, Roman, 269
Columns of Hercules, 311
Comes, the, 72, 266–267, 268*n.*, 277, 296–297, 301, 511*n.*
Commail, British Prince, 334
Commendation, 12
Common land, 53; in British tref, 54; appropriation of, 74; royal right of alienation, 130
Common Law, 33; modern narrowness of, 189; founded by Henry II, 197
Common Pleas, justices of, 188, 237
Commons, House of, origins of, 254–255
Commot, 53, 96–97, *584*
Commune, the, 247
Compurgation, 10; comparative values of various oaths, 133; 176–183, 189, 191; compared with the jury system, 203; compared with witnesses, 205–206; abolished in criminal cases, 211–212; 216
Compurgators, 10
Conan Meriadoc, British Prince, 316
Concionator, 155
Condidan, King of Pengwern, 334
Confederations, for military purposes, 89
Congresses for government, 84
Conservators, of the Peace, 249–250; summoned to Parliament, 251, 254; 252; commissions of, 253; 268
Constable, the, in the Channel Islands, 100; 164, 249
Constans, Emperor, 316
Constans, Emperor in Spain, 321
Constantine I, Emperor, 127, 265, 272*n.*, 280*n.*, 295, 296, 313, 414
Constantine, Emperor in Britain, 277*n.*, 320, 321
Constantine V, Emperor of the West, 417*n.*
Constantine II, King of Scots, 395*n.*
Constantine III, King of Scots, 368; defeated by Athelstane, 369, 396–397, 525
Constantine, "Tyrant of Damnonia," 332
Constantinople, 414, 443 *See also* Byzantium
Constantinus Porphyrogenitus, Emperor, 433
Constantius, Emperor, 127, 312, 313
Constitution, the, worked by two classes, executive and representative, 245
Consulares, 287
Convention in London (1170), 241
Coritani, the, 260, *595*
Cornwall, 340*n.*, 342. *See also* West Wales
Cornwall, duchy of, 98
Cornwall, earl of, 253
Coronation, 232
Coronation oath, the, 576
Coroners, 243–244
Corporations, rights of, to fines, 48, 80
Cotarii, the, 13, *580*
Cotsaetan, the, 13. *See also* Cotarii
Council of the Realm, 224
Council of Three Hundred, 87
Councils, provincial, in the Roman Empire, 275–288, 306, 307
Count of the Saxon Shore, 297
Counts, Frankish, 32. *See also* Comes
Cour plénière (placitum) of Franks, 90
Court (judicial and legislative assembly), essential element in English policy, 1; a limitation on monarchy, 3
Court, Barmoot. *See* Barmoot Court
Court baron, 37, 63, 438
Court, county, 37, 121–122
Court of Equity, 232
Court of heritage, 101
Court, hundred, 37; composition and jurisdiction of, 79–81; methods of meeting, 121–122
Court of Husting, 208
Court, the King's. *See* Curia Regis, King's Court

Court leet, 37, 63, 165 *n.*, *582*
Court, manorial, 215
Court, of the township, 63
Courts, Duodenary. *See* Duodenary Courts
Courts, Teutonic, 69; held in open air, 111, 112–113; proceedings oral, 113–115
Coventry, earldom of, 517 *n.*
Cramond, 294 *n.*
Craven, in Yorkshire, 364 *n.*
Crediton, 145
Crida (Creoda), Ruler of Wessex, 325 *n.*, 359, 381
Crime, community responsible for, 149; two classes of, 168
Crocus (Erocus), 314, *598*
Crokentorre, 112, *589*
Crown, the. *See* Sovereign
Croyland, 136, 386
Cubicularius. *See* Chamberlain
Cumberland, 135, 363, 373, 375
Cumbria, retains Druidical faith, 125; a British Commonwealth, 357, 362; 3 divisions in, 363; wars with invaders, 364–366; emigration from, 366; submission to Edward, 367; connection with Scots, 368; rule of succession in, 368, 370; granted to Malcolm, 370; after the Norman Conquest, 373–377; peculiar laws retained in, 375; 391, 394; a distinct kingdom in the time of Edgar, 495; 512, 515, 525, 529 *n.*
Cunedda Wledig, British King, 379
Cunobeline, British King, 552
Curia, the, 270–271, 476
Curia Regis, the, 174. *See also* King's Court
Curiales. *See* Decuriones
Curiosoliti, the, 316
Customary tenure of land, 53
Custos Placitorum Coronæ. *See* Coroners
Cuthbert, St, 134; franchise of, 499 *n.*
Cuthred, King of Wessex, 495 *n.*
Cuthwine, of Wessex, 325 *n.*, 334, 335, 380
Cuthwulf of Wessex, 325 *n.*, 334, 380
Cwide, the, 486
Cyil, the plains of. *See* Kyle
Cymri, the, 29; measurement of land among, 75, 260, 515
Cymric, language, the, roots analogous to Belgic, 22
Cynegils, King of Wessex, 339 *n.*
Cynewulf, King of Wessex, 340, 412
Cynric, Ruler of Wessex, 21, 325 *n.*, 331, 334
Cyrvyn, British king, 29

Dacia Ripensis, 297
Dalriads, the. *See* Scots
Damnonia (Devon), 123, 331, 338, 554, *590*; kings of, 321
Damnonii, the, 347
Danegeld, refused by Malcolm II, 371, 400 *n.*, 563 *n.*; agreed upon by the Witenagemot, 564; 583
Danelaw (Danelage), the, 39, 40, 230, 235, 494; boundaries of, 497; population of, 499; laws in, 500
Danes, the, 38, 39; destroy churches, 135; invasions of, affect ancient policy, 159; 326; ally with Britons against Saxons, 341; invade Northumbria, 366; ally with Scots against Athelstane, 369; 370–371, 389; occupy Bernicia and Deira, 395; attack, but later ally with Picts and Scots, 396; extinguish subordinate Saxon dynasties, 493–494; land in Dorset, 493; raids of, a continuation of Saxon expeditions, *ib.*; found the Danelaw, 494; coalesce with the Angles, 499; effect changes in territorial dignities, 519; devastate Saxon cities, 552–553
Danish Burghs, the, 39, 553; thanes of, attend the Witenagemot, 566; a recognised community, *ib.*
Danish conquest, the, 40. *See also* Danes
Danish invasions, 484. *See also* Danes
David I, King of Scotland, 373–374; marries daughter of Waltheof, 532; opposes Normans, 533; 545 *n.*
David II, King of Scotland, 119, 541
David, Earl of Huntingdon, 439 *n.*
Day-maths, 61
Decania, the, 163
Decanus, the, head of the decennary, 163
Decennaries, military divisions, 163
Decennarius, the, 163
Decuriones (curiales), 268 *n.*, 270, 277
Dee, the river, 364, 378, 383, 400, 528
Deemsters, the, 98, *587*
Deheubarth, Demetia, 382, 383, 515
Deiotarus, King of Galatian Tetrarchies, 87
Deira, 94, 333, 356–358, 359, 362; occupied by Danes, 395; governed by Danes, 497–498; an earldom, 498. *See also* Northumbria
Delphi, 87
Demesne-lands, 130, 134, 234
Demesne towns, 243
Denisesburn, battle of, 360, *602*
Deposition, of kings, 575
Derby, 40
Derbyshire, 94, 497 *n.*
Desiderius, Lombard king, 447
Deucalion, 84
Deunan, Britons in, 388. *See also* Devon
Deunsetas, 388, *602*
Deur. *See* Deira
Deva, 76. *See also* Chester
Devon, 341, 566. *See also* Damnonia, Cornwall, duchy of
Diar, priests of Asgard, 108
Diceneus, 63, *584*
Dikastes, the, 87
Dioceses, Anglo-Saxon, 126
Diocletian, Emperor, 265, 267, 292, 307, 311, 313
Distress, power of, assumed by King's Court, 148
Distringas, writ of, 148
Divitiacus, Gaulish Chieftain, 426
Dol, *602*; the see of, 357
Domangart, King of the Scots, 367 *n.*

Domas (precedents), 34
Domesday Book, 12, 13, 42; decreed by Witenagemot, 221; survey carried out by inquests, 222; contains few British names, 342; 552, 554, 580
"Dominium," "directum," and "utile," 114
Donald III, King of Cumbria, 368
Donald IV, King of Cumbria, 364 *n.*, 369–370
Donaldbane, King of Scots, 526, 531 *n.*, 548 *n.*
Doom-book, of Alfred, 37
Dooms of Ethelbert, 34–36, 580, *582*
Doomsmen, 302, 482, 519 *n.*
Dorobernia, 552
Dorsetshire, 341, 493, 566
Douglas, the river, 333, *601*
Dozeineers, in Guernsey and Jersey, 100
Drengs, the, of Northumbria, 579
Drepanum, 313
Drontheim, 107, 120, *590*; Folkmoot of, 120
Drottnar, Lords of Asgard, 108
Druids, the, 17, 28; stone circles of, 113; 125, 264; strong in North Britain, 357
Drum Alban, 393
Drynæmetum, 87
Duan of Albania, the, 324, *599*
Duel, the, 179–180. *See also* Battle, Trial by
Duffus, King of Cumbria, 371
Dukes, 296–297; office of, in the Carlovingian Empire, 442–444; receive delegated authority as well as patriarchal, 444–446; compared with earl of Argyle in 16th century, 449–450
Dumbarton. *See* Alcluid
Dumfermline, King of, 544
Dumnail-raise, 370 *n.*
Duncan I, King of Scots, 372, 401
Duncan II, King of Scots, 526, 532 *n.*
Dunfoder, 396
Dunwallo, the Briton, 540
Duodenary Courts, their origin, 108; predominating elements in English institutions, 568
Durgwyr (Durotriges), the, 338
Durham, 134; bishop of, acquires palatine rights, 499
Durotriges, the. *See* Durgwyr
Dux, 301, 511 *n.*
Dyvnaint, 339. *See also* Damnonia, Devon
Dyvnwal Moelmud, British Prince, 24, 28, *581*
Dyvnwarth ab Prydain, British Prince, 28

Eadbert, King of Northumbria, 365; allies with Picts, 366, 394, 396; revives power of Northumbria, 490
Eadburgha, daughter of Offa, 410 *n.*
Eadric, King of Kent, laws of, 36, 155, *582*
Eadric Streona, 94, 520
Eadulf, Earl of Northumbria, 398, 400, *602*
Ealdhun, Bishop of Durham, 517 *n.*
Ealdormen, chieftains or kings, 7; 12; concur in laws of Ina, 36; installation of, 78–79; preside over Hundred Court, 79; two types of, 79–80; connection of, with Hundred gerefa, 80; 95; compared with Justiciar, 236; patriarchal rulers, 479; appointed to rule Mercia, 496–497; in East Anglia, 499; in Essex, *ib.*; 511 *n.*; under Edgar, 515; descended from ancient royal families, 515–516; ambiguous application of term, 519; viceroys, 520; cf. earls of Canute, 520, 521
Eanfrid, King of Bernicia, 358, 359, 392
Eardulf, King of Northumbria, 407–409
Earl-kind, compensation for murder of, 150
Earls, appointed by Canute, 521. *See also* Ealdorman
Earthworks, for judicial purposes, 112–113
East Anglia, 40; Scandinavian element in courts of, 41; ealdormen of, 79, 499, 515; colonized by Saxons, 319; 336; early history of lost, 344; divided between two tribes, *ib.*; separated from rest of England, 344–345; Britons in, 387; Danish kings of, 499; 521
East Anglians, 389
Easter, Court held at, 232, 235
Ebro, the river, 419
Ebroin, Mayor of the Palace, 569
Ebusa, leader of the Angles, 354
Ecgfried (Ecgfrith), King of Northumbria, 139, 364–365; defeats Picts, 393; 490
Ecgfrith (Ecgferth), King of Mercia, 409, 486
Echevins, authority of, 71; judicial and legislative functions of, 90–91; 116 *n.*; present criminals, 175; compared with jury, 203; 463, 465; represent the Hundred in Shiremoot, 558
Eddas, the, 8, 30, *578*
Edgar, King of England, 79; creates palatine privileges of Ely, 134; restores church lands, 136; 141; and office of Chancellor, 144–145; requires all men to find sufficient Borh, 159; 205; institutes judicial eyres, 233; 371, 383, 384, 389; grants Lothian to Kenneth, 398–399; Basileus, 494; imperial power of, 494–495; establishes feudality, 511; 522; Charters of, 527 *n.*, 543; 528, 548, 550, 551 *n.*, 568, 569, 570 *n.*; laws of, 38, 155, 561
Edgar Atheling, 498, 530, 531, 532, 548 *n.*
Edgar, King of Scotland, 526–527, 530, 532, 542 *n.*
Edinburgh, 138; taken by Scots, 398; castle of, 535, 547, *607*
Editha, wife of Edward the Confessor, 571
Editha (Matilda), wife of Henry I of England, 530, 531 *n.*
Edmund, King of England, defeats Scots, 369; grants Cumbria to the Scots, 370, 397; 385; laws of, 38
Edmund, Earl of Cornwall, 253

Edmund, son of Malcolm Canmore, 530
Edobincus, Frankish king, 321
Edred, King of England, 371, 397, 499 *n.*
Edsi (Eadsige), Archbishop of Canterbury, 141, 143, *592*
Edward the Confessor, King of England, 141, 142, 143, 196, 401, 487, 512–513, 525, 568, 576; laws of, 38, 44
Edward the Elder, King of England, 154, 383, 386, 396, 487 *n.*, 494, 499, 525, 548, 559, 561, 583; laws of, 38
Edward the Martyr, King of England, 485 *n.*
Edward the Outlaw, 534 *n.*
Edward I, King of England, 220, 237, 251, 253, 514, 525; his claim to supremacy over the Scots, 527, 544, 546 *n.*, 547 *n.*
Edward II, King of England, 255, 564 *n.*
Edward III, King of England, 174, 238
Edward, son of Malcolm Canmore, 530, 541 *n.*
Edwin, King of Northumbria, 29, 125, 337; takes refuge in East Anglia, 357; king of all Northumbria, 358; Bretwalda, *ib.*, 489 *n.*; adopts Christianity, 358–359; defeated and killed, 359; 381, 382, 391, 392, 490 *n.*
Edwin, Earl of Mercia, 136
Edwy, King of England, 550, 551 *n.*
Egbert, King of Wessex, 33, 131; canons of, 132; Bretwalda, 233, 340, 341; 339 *n.*; defeats Cambrians, 382, 384; claims throne of Wessex but flees to Mercia, 412; flees to Gaul, 412–413; 487 *n.*; supreme over other kings, 492; introduces feudality into England, 511; successors of, 550
Egbert, Archbishop of York, 9, *579*
Egilric, Bishop of Chichester, 207
Eginhard, 324
Elbe, the river, 19, 505
Election, popular, principle of, among Anglo-Saxons, 103–104, 567; among Visigoths, 104; among Suio-Goths, 105–106; in Norway, 106–107; uniformity of, in Teutonic nations, 109–110
Eleutherius, Bishop of Rome, 125, *590*
Elfwald, King of Northumbria, 560
Elfwin, daughter of Ethelfleda, Lady of Mercia, 496
Elizabeth, Queen, 188
Ella, Ruler of Sussex, 329, 330–331, 489, *600*
Ella, King of Northumbria (d. 589), 357
Ella, King of Northumbria (863–7), 490 *n.*
Ely, monastery of, palatine jurisdiction of, 134; history of, 135, 591; lands of, taken, 136; lands of, restored, 207
Ely, Abbot of, 145
Emperor, the Carlovingian, supreme legislator, 466
Empire, the Anglo-Saxon, formed of separate political units, 556, 558–559; the church, a bond of union in, 559–560; law of the Basileus not always accepted, 561
Empire, of Britain, the, 494, 495
Empire, the Carlovingian. *See* Carlovingian Empire
Empire, the Roman. *See* Roman Empire
Eneon Urdd, British King, 362, 363, 379
Englisherie, presentment of, 152
Eocha, King of Scots, father of Alpin, 394
Eocha, King of Scots, 368
Eocha (Eugenius or Owen), King of Strathclyde, 369
Eorlcund men, 9, 11, *579*
Eorls, 9; rights of, 10, 11; 95
Ephesus, 85
Equites (nobility), 17
Equity, Court of. *See* Court
Erb Theel, 62
Erc, King of Ireland, 351, *602*
Ercenwine, Ruler of Essex, 345
Eric, Road of, 106, *588*
Eric, King of Northumbria, 364 *n.*, 369 *n.*
Eric (Æsc or Oisc), acquires Kent, 325, 327, 354
Ernulphus, Bishop of Rochester, 35, 36, *582*
Erocus. *See* Crocus
Eskdale, 89
Esplees, 186, *594*
Essex, 94, 345, 497 *n.*; ealdormen in, 499
Ethelbald, King of Mercia, 126, 491
Ethelbert, King of Kent, 126, 137, 335, 380, 382, 489 *n.*, 491; laws of, 34–35
Ethelbert, son of King Ethelwulf, 495 *n.*
Ethelbert, King of East Anglia, 490 *n.*
Etheldreda, St, 134, 207, *591*
Ethelflaeda, Lady of Mercia, 496
Ethelfrith, King of Northumbria, 357; sons of, 358; 367; conquers Cambrian Britons, 381; 382, 392
Ethelred the Unready, King of England, requires all freemen to find Borh, 159; 371, 372, 387 *n.*, 517, 520, 551 *n.*, 576–577; laws of, 38, 175
Ethelred, King of Mercia, 139
Ethelred, King of Northumbria, 138, 498
Ethelred, Abbot of Dunkeld, 530
Ethelred, Ealdorman of Mercia, 128 *n.*, 496, 511, 516 *n.*, 559 *n.*
Ethelwald of Wessex, 487 *n.*
Ethelwulf, King of Wessex, 128–129, 395 *n.*, 495 *n.*
Etheric, Bishop of Winchester, 145
Etruria, 85
Eudaff (Octavius), British Prince, 316
Eutychian heresy, the, 139, *592*
Evesham, the Abbot of, 184
Ewias, 563
Exchequer, the Royal, 223, 237, 573
Exchequer of Normandy, the, 213
Exchequer of Rouen, 120
Exchequer, Record of the, 117
Exchequer, the treasury of the, 222
Exe, the river, 153, 339, 585, *592*
Exeter, 38, 83 *n.*, 341; divided between Britons and Saxons, 388; refuses fealty to the Conqueror, 554, 555 *n.*; joins confederation, 566
Eynsham, 334 *n.*

Eyrarthing, 107, *588*
Eyres, judicial, of the sovereign, 570

Fæstingmen, 127
Falaise, treaty of, 535; cancelled, 537–539
Farinmail, King of Gwent, 334, 380
Fealty, 11; and beneficiary tenure, 432, 433 *n.*, 436, 502–503, 504; oath of, 445, 446, 447, 448, 535, 545, 548
Federation, earliest examples of, 87
Feorm, the, 234, *595*
Fergus, King of the Scots, 351, 367 *n.*, 525
Fethanleagh, battle of, 335
Feud, blood, 148–149
Feud, the, 52, *583*. *See also* Benefice
Feudalism, Anglo-Saxon, 12; its existence debated, 501; and military tenure, 502–503; not feudal law, 504–507; extended by later lawyers, 508–509; little effect on the lower stratum of tenantry, 509; introduced by Egbert, 511; under Edgar, *ib.*; lack of uniformity in, 511–512; illustrated by relations between the Basileus and subject kings, 512–513, ch. xx *passim*; and Anglo-Saxon earls, 515–521
Feudalism in the Carlovingian Empire, formed by union of Roman Law and barbarian custom, 61, 420–430; 420–459; Roman element in, 422–426; Teutonic element in, 428–433; increases the sovereign's power, 450–451; adds territorial authority, to personal, *ib.*; and the vassals, 451; mutual responsibilities of lord and vassal, 452
Feudal tenure, its origin in grants made to Roman soldiers, 61, 290; theory of, 433 *n.*, 435–438; connection with hereditary authority, 440–446
Fideles, the, 205
Fiery Cross, the, 114, *589*
Fifteenth, the (tax), 224
Fines, paid in kind, 35; 48, 64; for assurance of land, 116–117; 573. *See also* Were, Wite
Finns, the, 83, 84
Fitz-Aylwin, assize of, 211
Fitz-Peter, Geoffrey. *See* Geoffrey
Five Burghs, the, 39. *See also* Danish Burghs
Flambard, Ralph, 138
Flamborough, 356 *n.*
Flanders, 32; Count of, 438
Flavia Cæsariensis, 286
Flemen Firth, 231
Fleta, cited, 144
Flitcheham Burgh, hill of, 113
Florence of Worcester, 528
Florilegus, 528, *607*
Folgers, 15–16, 161
Folk-lands, 509, *606*
Folkmoot, the, 15, 66, 80, 81; judicial development of, 211; 224, 570, *584*. *See also* Court
Folkmoot, Frankish, the. *See* Mallum
Folkright, 53, 67, 130, *584*
Fordwich, 83 *n.*
Forest, the King's, 245, 246
Foresters, 244
Forth, the, 138, 347, 356, 497 *n.*, 525
Fosse, the, 232 *n.*
Fourth Monarchy, the, 259. *See also* Roman Empire
France, constitutional history of, misunderstood, 467–469, 477; disunion of, 470; component states incorrectly called provinces, 472
Franchise, forfeiture of, 174
Frank-almoign, 129, 213, *595*
Frankpledge, the, 157; seignorial, 158; collective, 158–167; nation divided into three classes for, 161–162; exemptions from, 162; possibly of military origin, 164; not found in all England, 166; 210, *593*. *See also* Tithing
Franks, the, subdue Burgundians, 21; origin of policy and institutions of, 27; rights of townsmen shown in laws of, 66; land tenure and its administration among, 70–73; clergy among, 132–133; jurors among, 204; 302; settled in Britain, 313; origins of, 424; assemblies of, 454–455, 462–478. *See also* Carlovingian Empire
Fredegonda, wife of Chilperic I, 221
Frederick Barbarossa, 433
Freeborh. *See* Frankpledge
Freebridge, 113
Frisians (Frisons), the, their connexion with Jutes, Angles and Saxons, 32–33; land tenure (Theel lands) among, 61–62; laws of, 17, 33, 420, *580*
Frotho, King of Denmark, 179, *593*
Fueros, the, of Navarre, 105, *588*
Fullofaudes, Count of the Saxon Shore, 319
Fundus, the, 75
Fyrd, the, 129, 249

Gabran, King of the Scots, 367 *n.*
Gadeni, the (tribe), 347
Gafol (tax), 554, *581*
Gafol-land, 23
Gaius, Roman jurist, cited, 271
Galatia, 87, 284, *586*
Galatians, the, 87, 88
Galedin, 21, *581*
Galerius, Emperor in Gaul, 307, *598*
Galgacus of Caledonia, 294, *597*
Gallienus, Emperor, 305, 598
Gallo-Graecia, 87
Galloway, 138, 348, 392, 394, 400, 497 *n.*, 547
Galway, 475, *606*
Galwegians, the, 545
Gariannonum, 291 *n.*
Gascons, the, 452, 470
Gau (or centena), 70, 444, 451, 465
Gauding, the, 70, *585*
Gaul, before Roman Conquest, 17; 31; assignment of colonies in, 76; 260; states in, 262, 269–270; overwhelmed by barbarians, 320; 459; diversity of its institutions, 474; 569

Gauls, Empire of the, 305
Gauls, Prefect of the, 265
Gavel, 23
Gavelford, battle of, 341 *n.*
Gavelkind, 57, 59
Gebur, 13, *580*
Geld, 221
Genealogies, source of Anglo-Saxon history, 324
Generation. *See* Team
Gengis Khan, 50, *583*
Geoffrey Baynard, 183
Geoffrey Plantagenet, Duke of Britanny, 197, 470, 537
Geoffrey, Bishop of Coutances, 207
Geoffrey Fitz-Peter, 244
Geoffrey of Monmouth, 333, *601*
George, Bishop of Ostia, 140
George III, King of England, 502
Geraint (Gerontius), British Prince, 321, 331, 339
Gerefa, the, equivalent to Cymric Maer, 64; functions of, 64–65; elected from villeinage, 68; organizes the hue and cry, 153; 175, 205; appointment of, 555; *584*
Gerefa, the Hundred, 80
Gerefa, the King's, 155
Gerefa, Shire, 95, 519 *n.*
Gerefa, the Wealh, 389
Germanus, St, 322
Germany, 18, 30, 31, 33, 459
Gerontius. *See* Geraint
Gervase of Canterbury, 240
Gesith. *See* Comes
Gesta Britonum, the, 333
Gewis, ancestor of Saxon kings, 331 *n.*
Gewrit, the (Writ), under the Great Seal, 572
Giant's Dike, the, 336
Gilbert de Balliol. *See* Balliol
Gildas, 317, 332, 350, 379, *600*
Gilds, the, 276; origin of, in Roman Colleges, 552; influence of, 554; *608*. *See also* Colleges
Gilla Aldan, Bishop of Whithern, 138
Gillmoriston (Pentejacob), 375 *n.*
Giraldus Cambrensis, 379, *602*
Gladheim, 109, *589*
Glanville. *See* Ranulf de Glanville
Glasgow, bishopric of, 373 *n.*, 374 *n.*, 375 *n.*
Glasgow, cathedral at, 374
Glastonbury, abbey of, 123, 136, 590
Glastonbury, Abbot of, 145
Glastonbury charter, the, 23, 527, *607*
Glen, the river, 333
Glendower, Owen, 557 *n.*
Gloucester, 94, 235, 318 *n.*, 334, 553 *n.*
Goaric, the Chancellor, 278
Godiva, wife of Leofric of Mercia, 136
Gododin, province in Bernicia, 356, 379
Godord, the, 93, *586*
Godordsman, magistrate and priest, 93
Godric, Abbot of Winchcombe, 142
Godwin, Earl, annexes Church lands, 136, 487 *n.*, 521
Gomer, 27, 260
Gorsedd, assembly of the Britons, 55
Goths, the, 31, 41, 324
Government, forms of, ancient, 49; patriarchal or territorial, *ib.*; of Nomadic tribes, 49–50. *See* State, the
Graf, Graphio. *See Comes*, Gravio
Grallent, King of the Britons, 309 *n.*
Grand Assize, the, 213, *595*
Grand Jury, in Channel Islands, 101
Gratian, Emperor, 280 *n.*, 282 *n.*, 316, 317, 320, *599*
Gravio (Graf), 66, *584*
Greeks, the, 68, 284, 433
Gregory, King of Scots, 540, *608*
Griffith (Griffin), King of the Welsh, 143, 513
Grifo, son of Charles Martel, 447
Grimsby, 40
Grith-sergeant, 173
Guernica, Oak of, 112, *589*
Guernsey, 100–101
Guests, of the Romans, 292–293
Gundulphus, Bishop of Rochester, 207
Gunnlaug, with the serpent's tongue, 180, *593*
Guthlac, St, of Croyland, 386, 581
Guthred, King of Northumbria, 499
Guthrum, King of East Anglia, 40, 497, 499
Gwent, 318, 380, 387; princes of, 338
Gwrtheyrn. *See* Vortigern
Gwynedd (North Wales), 366, 379, 382; 515
Gyso (Gisa), Bishop of Wells, 143

Haco the Good, King of Norway, law of, 106
Hadrian, Emperor, 266, 280 *n.*, 294
Hadrian, the monk, Abbot of St Augustine's, 569, *608*
Hærred (Hard), the, 73–74, 105, 482, *585*
Hærredz-Hoffding, the, 105
Hærredzthing, Court of the Hærred, 77
Haethfelth (Bishop's Hatfield), Council of, 139
Hagæ, 555, *608*
Halfdane, Danish leader, 39, 366, *583*
Half-king, title, 499
Halidom, the, 175, *593*
Halifax, 174, *593*
Hallam, Henry, cited, 469, 501
Hallelujah victory, the, 321, *599*
Hamlet, the, 53
Hamsoken, 231
Hamtun, shire of, (Hampshire), 565
Hard, the. *See* Hærred
Hardicanute, King of England, 143, 521
Harding, John, forged charters of, 541, *608*
Harlaw, battle of the, 546, *608*
Harold, King of England, 42, 513 *n.*, 514 *n.*
Harold Harefoot, King of England, 498, 551 *n.*, 553 *n.*
Harold the Fairhaired, King of Norway, 482
Harty, Isle of, 188
Havelok the Dane, 324, *599*

Heathfield (Hatfield Chase), battle of, 359
Hecca, Bishop of Chichester (Selsey), 143
Helena, wife of Constantius, 313, *598*
Helga, in Gunnlaug's Saga, 180
Hellespont, the, 87
Helvellyn, 377
Hemingus, sub-prior of Worcester, 136, *591*
Hengist, Jutish leader, 21, 33, 326–329; sons of, 354, 355
Henry I, King of England, Charter of, 196; 223, 244, 486*n.*, 507*n.*, 527*n.*, 530*n.*, 533*n.*, 573–574; laws of, 18, 45–46, 557*n.*
Henry II, King of England, founder of Common Law, 197–198; character of, 197–198; a great legislator, 198; 208, 217, 237; appoints "Barones Errantes," 239–240; his son is crowned, 241; appoints itinerant justices, 241; 387, 507*n.*, 519*n.*; relations of, with William the Lion, 535–537; considered as restoring the Saxon dynasty, 536; 562*n.*, 565*n.*; laws of, 184
Henry III, King of England, 238, 246, 249, 251, 252, 255
Henry IV, King of France, 467*n.*
Heorthfaest men (householders), 15–16
Heptarchy, the, 81, 310, 488
Hereditary principle, in beneficiary tenure 435–436, 442, 444, 448–449; in territorial dignities, 516–519
Hereditary succession among Anglo-Saxons, 483, 486
Hereford, 383, 387
Heretochs, 103, 249, *587*
Heretog, the, 445, 451
Hereward the Wake, 503*n.*
Herman, Bishop of Sherborne, 143
Hermeneric, King of the Ostrogoths, 41, *583*
Hertford, Sheriff of, 255
Heruli, the, *603*; king of, 434
Herutford (Hertford), Council of, 139
Hieromnenon, in Amphictyonic league, 85
Highway, the king's, 232
Hijodalgo, the, 18
Hiltrudis, daughter of Charles Martel, 447
Hincmar, Archbishop of Rheims, 163*n.*, 465*n.*
Hindostan, idols of, adopted by Northmen, 125; 274
Hlaford, the, 11–12; responsible for his men, 158, 175–176. *See also* Lords
Hlothhære. *See* Lothar
Holstein, 329
Holy Land, the, 242, 538
Homage, rendered by Scottish kings, 241, 399, 524–525, 537, 544; of vassals, 431–432, 447–448; renewed on change of lord, 436–438, 447*n.*
Hond-habbend, 172, *593*
Honorati, the, 268*n.*, 271, 277, 283, 307
Honorius, Emperor, Edict of, 276, 285; 277, 293, 318; abandons Britain, 320; acknowledges, but subsequently attacks, Constantine, 321; *596*
Horsa, Jutish leader, 21, 327–329
Hospes, the, 424–426
Housesteads, 294*n.*
Hoveden, Roger of, 97
Howard, John, 171, *593*
Howel the Good (Hoel Dda), 23, 96, 383; compelled to restore land by Witenagemot, 386, 563; 391, 515, *581*; laws of, 24, 29, 261, 384
Howel, King of West Wales, 342*n.*
Hreppar. *See* Rapes
Hubba, Danish leader, 493
Hue and cry, the, 66, 153, 250, 253
Hugh of Avranches, Earl of Chester, 515
Hugh Bigod, 519*n.*
Hugh Capet, King of France, 470*n.*
Hugoline, the Chamberlain, 571
Humber, the, 242, 260, 345, 347, 354, 355, 497*n.*
Humbert, Bishop of Lichfield, 143
Hundred, the, in the Anglo-Saxon state, 51; origin of term, 77; divisions of, 78; called Wapentake, *ib.*; entitled to part of fines etc., 80; judges of, 80–82; its connection with the Burgh, 82; shires formed of, 94; and the shiremoot, 95; and the justices in Eyre, 95; in the Isle of Man, 98; in Channel Isles, 100
Hundred, the, Court of. *See* Court, Hundred
Hundred, Gerefa. *See* Gerefa, Hundred
Huns, the, 324
Husting, the, 211, 505, 553, *606*. *See also* Court of Husting
Hwiccas, the, 94, 318*n.*, 380, 496, 516*n.*, *587*
Hyldath, the, 503

Ibelin, John of. *See* John
Iceland, government of, 93; 180; colonized by Norwegian refugees, 482
Iceni, the, 289, 343
Icknield (Ikenild) Street, 232*n.*
Ida, King of Northumbria, 354*n.*, 356; sons of, 357
Idle, the river, 358
Idwal (Welsh prince), 383
Illyria, 306
Ina, King of Wessex, 23, 135, 339; laws of, 36, 37
Indulf, King of Cumbria and of Scots, 370, 371, 398
Infangthief (and outfangthief), 64, 173, 174
Ingelheim, Placitum of, 488
Ingenui, 9
Ingulphus, Abbot of Croyland, 44; the chronicle, 45, 221; *583*
Ingwar, Danish leader, 366, 493
Inheritance, principle of, among the Britons and Picts, 261. *See also* Hereditary principle
Inquest, the, 199–201, 208, 210–219, 222–224; for purposes of taxation, 224; by justices itinerant, 240; on damages due to the church, 244. *See also* Jury

Inquisitions, written verdict of jury, 119; as to land, post-mortem, ad quod damnum, etc., 223
Inscriptions, source of history, 287, 294 *n.*
Inverary, 450
Inverness, Parliament of, 546 *n.*
Investiture, of an atheling or thane, 503
Ireland, land tenure in, 58; 310, 350
Irenarchs, analogous to Conservators of the peace, 268
Irene, Empress, 414, *602*
Irmin (Iring), 20, *581*
Irmin Street, 232 *n.*
Italy, 306, 317; overwhelmed by Barbarians, 320
Itineraries, the, 287
Ivor, Welsh prince, 338, 339

Jacob, King of the Galwegians, 371
Jaenberht, Archbishop of Canterbury, 411 *n.*, 560
James, I, King of England, 502
James I, King of Scotland, 541 *n.*; subdues Highland chiefs, 545–547
Jarls, of Norway, 8
Jedworth, 535
Jehmarch, King of Fife, 401, 529
Jerome, St, 88, 392
Jersey, 100, 101
Jerusalem, Apostolic Council of, 37, *583*; kingdom of, 422 *n.*
Jerusalem, Assizes of, 118
John Balliol. *See* Balliol
John, King of England, 101, 119, 217, 238, 243–244, 507, 573
John of Ibelin, 117–118
John the Monk, flies from Glasgow, 374
Judges, in middle ages, 90
Judgment of God, the. *See* Ordeal
Judicael, King of Westmere, 371
Judicatores, 81
Julia Mamæa, 598
Julius Caesar, cited, on Gallic society, 17; on Celtic civilization, 27; 88, 272 *n.*
Jurats, necessary to valid sale, 155–156
Jurisdiction. *See* the State
Jurisdiction, ecclesiastical. *See* Clergy
Jurors, 203–204. *See also* Recognitors
Jury, difference between medieval and modern, 199, 203; of the Grand Assize, 201; in Iceland, 100
Jury, Trial by, 199, 201; instances of, 207; not usually employed in personal actions, 214; only introduced in popular courts for civil cases by King's writ, *ib.*; occasionally purchased, 217; not compulsory until modern times, 219–221; *594*
Justice, administration of, not uniform in England, 81
Justice of the Peace, 119
Justices in Eyre, 95, 238
Justices, Itinerant, 210; under Henry III, 218; assist in assessment for taxation, 224; under William I and Henry II, 239–241
Justiciar, appointed by William I, 236; growth in importance of, 237–238
Justiciars of Guernsey, 101
Jutes, the, 21, 30, 33, 326–329, 489
Jutland, 329

Keepers of the Peace, 250
Keepers of the Pleas of the Crown, 243. *See also* Coroners
Kenneth MacAlpin, King of Scots, 367 *n.*, 368, 394–395, 398–400, 512, 544
Kenneth III, King of Scots, 529 *n.*
Kent, 21, 30; laws of, 36, 37; hundreds of, 81; 94, 228, 261; never included London, 345; 354 *n.*; does not acknowledge the supremacy of Edwin, 358; 492, 495, 496, 502; the Witenagemot of, 556–557
Kenton Manor, 76 *n.*
Kernau (Cornwall), 342
Kershope, the, river, 373
Kett the Tanner, 558 *n.*
Keys, the, in Isle of Man, 98, 99–100, *587*
Kien-Long, Chinese Emperor, 50, *583*
Kilkenny, 388
Kindred, individual severed from, 151
King, the Anglo-Saxon, 7, 8; authority of, personal not territorial, 49; selected as military leader, 87; etymology of term, 479; modern office unknown, 481; influence of Roman empire on, *ib.*; must be of royal lineage, 483–484, 492; the elective principle, 484, 487; function of the Witan in securing succession of, 485; national consent confirms right, 488; imperial sovereignty of, 488–490; adopts Roman symbols, 490; regarded as universal landowner, 509; twofold authority of, 551; recognized in each state but only crowned once, *ib.*; his rights in the burghs, 554; powers of, 568, 569; travels through the kingdoms, 569–570; remedial jurisdiction of, 570–571; is responsible to the nation, 574–575; theory of a constitutional compact, 575, 577; sacerdotal ordination of, 575; coronation oath of, 576; judicial powers of, *605*. *See also* Sovereign
King, the, in Etruria, 85–86; in Scandinavia, 106, 482; of Teutonic nations, adopts Roman imperial prerogatives, 299–300
King's Bench, the, 237
King's Burghs and Demesnes, franchises of, 134; 239
King's Chaplains, the, 143; sign royal Charters, 143–144; development of the office, 145–146
King's Court, the, 145, 148, 206, 215
King's Peace, Conservancy of the, 248–254. *See also* Peace
King's Thane, the, 177
King's Writ, the, 214, 215
Kingston, 234
Kinsig (Kynsige), Archbishop of York, 143

Knights, 503
Knights of the Shire, 240, 244; twelve elected to redress grievances etc., 244–247, 250; commanded to attend parliament, 247–248, 254; bound to attend array of the Shire, 248–249; four elected under direction of conservancy of the Peace, 250–252, 254; elected to attend parliament, 254–255
Kyle, taken from Britons, 365

Laen, 52, 67, *584*. *See also* Benefice
Læsiwerpo, Præceptum de, 438, *603*
Laeti, the, 292–294, 299, 309, 314
Laetic Lands, 292
Lagman, speaker in Reeffsting, 91–92, 105; election of, 106
Lagsaga of Sweden, the, 91
Lahmen, 41; in Damnonia, 80; 556, *583*. *See also* Lawmen
Lancashire, 94, 363, 365
Land, possession of, qualifies for Thane, 24; originally held by nations not individuals, 56–57; community of, 56–61; partition of, among British villeins, 58; hereditary succession to, 59; tenure in common persists after growth of hereditary succession, 61; measurement of, among Romans and Teutons, 75–76. *See also* Land tenure
Land of the Clergy. *See* Church
Landboc (Charter), the, 52; considered as evidence equal to living testimony, 116; 502, 571. *See also* Charter
Landboks, of Goths, 75
Landevenec, abbey, 309 *n.*
Landlords, 95
Landrica, the, 52, *583*
Land-Sergeant. *See* Grith-sergeant
Land tenure, 53, 54–56, 57, 59, 61–62, 67, 76, 101, 288–290, 292, 294, 296, 432–433, 435–438, 501–503, 506–507
Landthing, 79
Lanfranc, Archbishop of Canterbury, 207
Langres, 292
Langton, Stephen, Archbishop of Canterbury, 245 *n.*, 246
Language, a test of genealogy of nations, 22
Langue d'oc, the (province), 277 *n.*, 473
Langue d'oil, the (language), 470
Largs, 402 *n.*
Lassi, 14. *See also* Ceorls, Villeins
Lateran, Council of, forbids Ordeal, 217
Lathe, the, 51
Lathen, 14. *See also* Ceorls, Villeins
Law, ancient, learnt from testimony of judges, 103. *See also* Civil Law, Common Law
Law, Anglo-Saxon, affinity of, to British, 23–25; fragments of customary, 24, 47; 30; oral and traditionary, 33; connected with the priesthood, *ib.*; metrical forms of, 34; codes of, 34–38; extension of. among Danes, 40–41; after the Conquest, 43–46; the language difficulty, 46; usually more ancient than the declaratory statute, 46–47; practical applications of, 48
Law of the Britons, and Anglo-Saxon law, 23–25, 30; codes of, 28–30; recorded in verse, 28
Law, English, 3–4; continuity of, 5; defects of, 6–7
Law, Frisian, in verse, 34
Law, Roman, 76, 132
Law, Teutonic, 2; modified by Roman jurisprudence, 61
Lawmen, 120, 388; of the burgh, 553; of Lincoln, 567
Laws, Molmutian (Triads), 28
Laws, of Alfred, 36–37; of Athelstane, 38, 561, *583*; of Canute, 38–39; of Edgar, 38, 155, 205, 561; of Edmund, 38; of Edward the Confessor, *ib.*, 44, 573; of Edward the Elder, 38; of Ethelbert of Kent, 34–35; of Ethelred, 38; of Haco, 106; of Henry I, 45–46; of Henry II, 184; of Hoel Dda, 29, 96; of Ina, 36; of Lothar and Eadric, *ib.*; of Offa, 37; of Wihtræd, 36; of William I, 43–45
Leeds, 364
Leet juries, 211, 556, 567
Legates, provincial, 279–280, 281–282, 283
Legislation, among the Franks, 91; in answer to petition, 461
Legislature, the, its connection with jurisprudence, 1, 2
Lenbury, 334 *n.*
Leo III, Pope, 408 *n.*, 409, 415 *n.*, 417 *n.*
Leod, the. *See* Laeti
Leofgar, Bishop of Hereford, 143
Leofric, Earl of Mercia, plunders church lands, 136; 496
Leofric, Bishop of Exeter, 145
Leoline, British prince, 313, 315
Leonorius, King of the Galatians, 87
Lest (Lathe), in Kent, 82
Letters Patent, for assessment of taxation, 222
Leudes, the. *See* Vassus
Lex regia, the, 278
Liber Beneficiorum, the, 295 *n.*
Liber Winton., the, 555 *n.*
Lichfield, archbishopric of, 411 *n.*
Lichfield, chronicle of, 97
Liddesdale, 89
Limitanean soldiery, the, 290, 294, 297, *597*
Lincoln, 359, 516 *n.*, 553 *n.*, 567. *See also* Lindisse
Lindisfarne, bishopric of, 138, 365
Lindisse, 94, 359
Lithuanian nation, the, in vassalage to German lords, 20
Litus (litones), 14; equivalent of roturiers, 19, *580*. *See also* Ceorl, Villein
Litus Saxonicum, the, 319, 343
Liutberga, wife of Tassilo III, 447
Llandaff Cathedral, 76, 380
Llewellyn, Prince of Wales, 513, 514 *n.*
Llewellyn of Demetia, British prince, 369, 385

Lloegria, 21, 327, 329, 345, 379, 385, 540, *581*
Llongborth, 331
Llywarch Hên, Elegies of, 331, 334 *n.*
Loarn, leader of the Scots, 351
Lochlin, the host of, 318
Locrine, legend of, 540, *607*
Lögretta, the, of Iceland, 93, *587*
Loidis. *See* Leeds
Lollianus, Emperor in Gaul, 306
Lombardy, 433
London, city, its customs still testified by the Recorder, 119; by-laws of, to secure observance of statutes, 160; 208; first Lord Mayor of, 211; occupied by Saxons, 319; probably independent of early Saxon kingdoms, 345; Tower of, 547; Burhware of, 553, 556; *601*
London, Bishop of, 36, 555
Lord-Marcher, the, 563
Lords (Hlafords), 11; relations with vassals, 12–13; of the townships, 52; 506
Lords Justices, 236
Lordship, 11; jurisdiction of, 64
Lothar, King of Kent, 139; laws of, 36, 155, *582*
Lothian, 135, 174, 348, 356, 372, 398–399, 401–402, 497 *n.*, 498, 512, 525, 544, *602*
Louis-le-Debonnaire, Emperor, 203 *n.*, 458 *n.*, 464 *n.*, 465 *n.*
Louis-le-Germanique, Emperor, 419 *n.*
Louis, St (Louis IX, King of France), 469, 470 *n.*
Lucius, British King, 125, 265
Ludval, King of the Welsh, 384 *n.*
Lugubalia. *See* Carlisle
Lutarius, King of the Galatians, 87
Lycaonia, 284
Lycia, 284

Mably, G. B. de, cited, 469
Macbeth, King of Scots, 401
M'Callum Mor. *See* Argyle, Earl of
Maccus, King of Mona and the Isles, 400
Mactiern, duty of, 385 *n.*
Mæatæ, the, 347
Mægla, Saxon leader, 21
Mægth, the, responsible for the crimes of individuals, 150–151
Mælbæthe (Mælbæth), King of the Scots, 401, 529
Mænawl, the, 53–54, 67
Maer (Moaŧ), the, his authority in the Maenawl, 54; partitions land, 58
Magesetania. *See* Hwiccas, the
Magistri militum, powers of, 296, 297
Maglocunus, British prince, 332, *600*
Magna Carta, 149, 199, 217, 245; renewed by Henry III, 246
Magnentius, Emperor, 314, *599*
Magnus, King of Norway, 575 *n.*
Mahomet, 414
Mair, the, 119, *590*
Malcolm I, King of Cumbria, of Scots, 370, 397
Malcolm II, King of Cumbria, 371, 400
Malcolm II, King of Scots and III of Cumbria, 112, 371–372; refuses to pay danegeld, 371, 563 *n.*; 400, 517 *n.*, 529, *589*
Malcolm III, Canmore, King of Scots, divides kingdom into dioceses, 138; 372; marries Saxon princess, 373; opposes William I, *ib.*, 530; performs homage to William, 373; 399 *n.*; becomes king of Scots, 401, 525–526; opposes William I and William II, 530; Saxon names of his children, *ib.*; 541 *n.*, 542 *n.*, 547
Malcolm IV, the Maiden, King of Scots, 374 *n.*, 528, 537, 539 *n.*, 545
Maldon, 83 *n.*
Mallum, the (Frankish Folkmoot), 66; summoned by centgrave, 72–73; 151, 455; meeting of dependent nations in Carlovingian empire, 462; attendance at, 463; administrative powers of, 463–464; mode of proceeding, 465–466; develops into legislatures of later provinces, 472–473; 476, *584*
Man, Isle of, Hundreds in, 77; government in, 98–100
Man and the Isles, Bishop of, 138
Mancipation, 114, *589*
Mancusas, 505, *606*
Manens, the, 13, 130, *580*. *See also* Ceorls
Manor, the King's, 23; 51; in Scandinavia, 76; comparison of Scandinavian and Anglo-Saxon, 83; relation of, to the Shiremoot, 96; *583*. *See also* Township
Mansionatica (Metatum or Parata), 128
Mansus, to be granted to every church, 131
Manumission, 120, *590*
Manupast, 157, 161, *593*
Maor, 54
Maormor, 54
Marcellinus, 326, *600*
March lands, settled by Roman soldiers, 290
Marches, the. *See* Border law
Marcomanni, the, 89, 293, *586*
Marculfus, 406, *602*
Marcus, Emperor, 320
Margaret, wife of Malcolm Canmore, 530; descendants of, 548
Marius, Caius, 289, *597*
Marius, Emperor in Britain, 306
Marleberge (Marlborough), Statute of, 215, *595*
Marseilles, 419 *n.*
Marseilles, Bishop of, 309
Maserfelth, battle of, 362
Mass-Thane, the, 130, 133, *591*
Mathraval, 381
Matilda, daughter of Malcolm Canmore. *See* Editha
Matilda, the Empress, 530 *n.*
Matthew Paris, 244
Mauduit, William. *See* William
Mauretania, Kings of, 265
Maxim Wledig, 318. *See also* Maximus
Maxima Caesariensis, 286

Maxima Concio, the, 206, 594
Maximian, Emperor, 308, 311, 313, *598*
Maximus, Emperor, 315–318; descendants of, 346; *599*
Mayor of the Palace, the, 454, 457
Mechdeyrn ddyled, 385 *n.*
Medeshamstede (Peterborough), 136
Meliores, the, 205
Melrose, the chronicle of, 528
Men. *See* Vassals
Menapia, 310
Menavian Islands, the, 358, 381
Mercheta (Amobreu), 54
Mercia, kingdom of, 94, 140; burghs in, exempt from the Tithing, 166; 231, 235, 329, 334; rejects Christianity, 359; origin of, *ib.*; 380; its formation, 381; decay of, 491; submits to Egbert, 492; the marches of, 495, 496; united but not incorporated with Wessex, 496; recovered by Alfred from the Danes, *ib.*; divided and ruled by Ealdormen, 496–497, 515, 521; 499; 551; refuses to accept laws of Wessex, 561
Mercians, the, 31, 37, 359
Merlin, 334
Merobaudes, Frankish chief, 299, *597*
Meroveus, King of the Franks, 456
Merovingian dynasty, 455, 457
Merse, the, 400
Mervyn, son of Roderick the Great, 382
Metatum, 128
Middlesex, 94
Military tenure, among the Romans, 288–289, 294–297. *See also* Feudalism
Milites Castellani, the, 292
Militia, the, 248
Minsters, Anglo-Saxon, 131
Missus, the (among Franks), 71–73, 242, 462, 463, 464, 469, 473, 569
Moar, the, 98
Molmutian laws. *See* Triads
Mona, Mon Mân Cymri (Anglesey), 381
Monarchy, evolved from a federation, 50–51, 87; founded on military power, 89–90. *See also* King, Sovereign
Monmouthshire, 380, 387
Mons Badonicus, 330, *600*
Mons Placitorum, 112, *589*
Montfort, Simon de. *See* Simon
Montlosier, Comte de, cited, 469, *604*
Moot-hills, 112–113
Morcar, Earl of Northumbria, 136
Morcar, Danish thane, 566 *n.*
Morgan Hên, Prince of Brecknock, 386, 515
Morgannoc (Glamorganshire), 95
Morganwy, Princes of, 338
Mortimer, Robert (Roger?) de, 252
Morva Rhuddlan 381 *n.*
Mul (Mollo), brother of Ceadwalla of Wessex, 340 *n.*
Mundiburd, 18, *580*
Municipia, 269
Murder, punishment of, 168, 172
Murdrum, instituted, 151–152; exacted by William I, 152; *592*
Mycel-gemot, the, 560
Mycel-getheaht, 567
Myrcenlage, 39, 497. *See also* Mercia
Mysia, 286

Næmda, the, judicial tribunal of the Hærred, 76; Twelve men selected from the Hærred, 77; different forms of, *ib.*; elected for legislative work, 92; *585*
Naïssus, 313
Namium (distress of debtor), 147
Narbonensis, 277 *n.*
Nassau, 89
Navarre, King of, 105
Navicularii, the, 273
Nazanleod (Natanleod), King of Britain, 331
Nectarides, Duke of Britain, 319
Nen, the river, 344
Nennius, 263, 312
Nestor, St, Bishop of Mandi, 268 *n.*
Netherlands, the, 234, 279
Neustria, 474
Nibelungen-lay, the, 418
Nimeguen, 407, 408 *n.*
Ninian, St, 138, *592*
Nismes, 419 *n.*
Nobiles, the (Ingenui, Eorls, Equites, Eorlcundmen, Thaneborn), 9. *See also* Eorls, Thanes
Norfolk, 79 *n.*, 94, 297, 497 *n.*
Norman Conquest, results of, exaggerated, 41, 574
Norman (Channel) Islands, the, government in, 100–102
Normandy, 102–103; States of, 102; rebellion of peasantry in, *ib.*; laws of, 199, 226
Normans, the, 470; their institutions based on Saxon forms, 572–573
North Sea, the, 32, 291
Northampton, the Assize of, enforces Frankpledge, 210, 217; *594*
Northampton, Great Council at, 241; 497 *n.*; parliament at, 562
Northmen, the, 38, 341. *See also* Danes
Northumbria, the kingdom of, 39, 131, 132; dismemberment of, 134; boundaries of, 138; 140; does not contain frankpledge system, 166; separation from rest of England, 242, 562; 329; its 2 provinces united, 357; conquered by Edwin, 358; divided, 359; reunited by Oswald, 362; British inhabitants in, 363; wars in, 364–366; allied with Picts and Scots, 394; 397, 398, 490, 491, 492; included in the Danelaw, 497; separate from Wessex, 498; divided into Earldoms, *ib.*, 521; 551; Witenagemot of, 560
Northumbria, earldom of, hereditary succession in, 517
Northumbrians, the, 31
Norway, succession to throne in, 106–107
Norwegians, in Scotland, 497 *n.*, 498 *n.*
Norwich, 83 *n.*
Novantae, the, 347

Novel Disseisin, Assize of, 213
Novempopulania, 277
Numa, legendary king of Rome, 272

Obertus ab Horto, 512, *607*
Octa, leader of the Angles, 354
Odal. *See* Allodial land
Oder, the River, 419
Odilo, Duke of the Bavarians, 447
Odin (Woden), 8, 108
Odo, Bishop of Bayeux, 207, 236
Offa (Uffa), King of the East Angles, 344
Offa, King of Mercia, 140, 143, 380, 381, 409–412, 486, 491, 560, 575; his laws, 37
Offa of Northumbria, 358
Offa's Dyke, 336*n.*, 381–382
Officina Brevium. *See* Chancery
Oiscingas, the, Kings of Kent, 326
Olave the Holy, King of Norway, 107
Olave. *See* Anlaf
Old Sarum, 334
Old Saxons, the. *See* Saxons, Old
Orcades, the. *See* Orkneys
Ordeal, trial by, 30, 176, 183, 189, 191, 211–212, 217, *581*
Ordericus Vitalis, 528
Ordinance, distinct from law, 464–465
Orkneys (Orcades), the, 319, 327, 354, 358, 544
Ornest, the. *See* Battle, trial by
Orvarthing, the, 115, *590*
Osbert, King of Northumbria, 490*n.*
Oslac, Earl of Deira, 134, 399, 515
Oslac of Northumbria, 358
Osric, King of Devia, 359, 360
Oswald, King of Northumbria, 337; defeats Ceadwalla, 360; unites Northumbria, 362; killed by Penda, *ib.*; Bretwalda, 391, 489*n.*, 490
Oswald, St, Archbishop of York, Bishop of Worcester, 136, 399*n.*, *591*
Oswin, King of Deira, 362
Oswin of Northumbria, 358
Oswio, King of Northumbria, 358; becomes Bretwalda, 362, 391, 489*n.*, 490; 393, 516*n.*
Oswulf, Earl of Northumbria, 134, 398
Otadeni, the, 347, 356
Oudoceus, Bishop of Llandaff, 138, *591*
Ouse, the river, 344
Outfangthief. *See* Infangthief
Outlawry, 183
Owen ap-Maxen, 318*n.*
Oxford, 244, 566*n.*

Pacatian, diocese of, 287
Pagus, the (territorial division), 89
Palatine Clerks (Chaplains), 144
Pamiers, Parliament of, 473
Pandulphus, papal legate, 238, *595*
Pan-Ionian synod, the, 85
Pannage, 208
Papas, of the Greeks, 68, *585*
Papinian, Roman jurist, 263, *596*
Parata. *See* Mansionatica
Paraverda, 128
Parentela (Clan), 151
Pares Curiae, 563
Paris, 308, 544
Parliament, its origin in the legal constitution, 2–3; a council of the aristocracy in middle ages, 90; in Sweden, 92; in Iceland, 93; representation in, a development of early juries, 96–97; under Henry II, 198; royal presence in, 239; under Henry III, 246; to be held three times a year, 247; jurisdiction as a remedial court, 251; elements of, 254; a court of justice and a political congress, 256; influence of precedent in, 257; its origin not wholly Teutonic, 302–303; under Edward I, 563
Parliament, assemblies of, at Worcester, 90*n.*; at Salisbury, *ib.*; of Pamiers, 473; of 1265, 251, 255; of 1290, 254; of 1283, 562
Parret, the river, 338*n.*
Patricius, 301
Patrick, St, 317, 350, 403*n.*, *602*
Paulinus, St, Bishop of York, 358
Pavia, 544
Peace, the King's, 96; in Churches, 134; 232–233
Peada, King of Mercia, 516*n.*
Peine forte et dure, 219–220
Pelayo, King of the Goths, 41, *583*
Pencenedyl, the, 55, 56, 57, 261, 509
Penda, King of Mercia, 337; allied with Britons against Edwin, 359; defeats Oswald of Northumbria, 362; 516*n.*
Pendragon Castle, 377
Pengwern, 381
Penn, battle at, 338*n.*
Pennenden Heath, 122, 207, 556, *590*
Pennoncel, right of bearing, 249
Penteuluodd, 55
Pepin le Bref, King of the Franks, 447, 455, 459, 510*n.*, 604
Pepin, King of Italy, 163*n.*
Persia, 267
Peterborough, Monk of, 197, 235
Peterborough. *See* Medeshamstede
Petronius, Prefect, 276, 277*n.*
Petty Jury, origin of, 219
Peykirk, monastery, 136
Phæacians, the, 86
Philip IV, King of France, 102, 469, 473, *587*
Phrygia, 87
Picts, the, 260; origin of name and history of, 348; not originally distinct from other British tribes, 349, 350; 356; succession through female line, 391; divorce among, 391–392; at war with Ecgfrid, 393; bishop of, *ib.*; subdued by Scots, 394–395; exist in the 12th century, 395. *See also* Picts and Scots
Picts and Scots, allied with Saxons, 319, 390; defeated by Jutes, 327; 362, 364, 391; at war with Ecgfrid, 393; allied with Eadbert, 394–395; harried by Danes, 395–396; allied with Danes, 396; 397
Pistor, the, 273

Placitum, the Frankish, 458–459; composition of, 460; preceded by smaller assembly, 461; no coercive power over States of the Empire, *ib.* *See also* Cour plénière
Pleas of the Crown, 231, 239, 243
Pleas of the Crown, Keepers of the. *See* Coroners
Plebs, the, 17
Poems, heroic, earliest forms of Teutonic history, 323–324
Poland, Diets of, 279
Porta, leader of the Saxons, 331
Port-gerefa, the, 155
Portsmouth, 331 *n.*
Portus Adurni, 297, *597*
Posse Comitatus, 250
Possessores, 268 *n.*, 271, 277
Posthumus, Emperor, 305, 306, *598*
Pothier, Robert Joseph, 193, *594*
Powys, kingdom of, 318, 381, 382, 383
Præpositus of the Hundred, 222
Præside (ruler of province), 287
Præstarium. *See* Benefice
Prætorian Prefect, the, 282–283
Prasutagus, ruler of the Iceni, 262
Prefects, 267
Prefectures, the Roman, 265
Presentment of crime, 175
Priest, the, attests sales, 155. *See also* Clergy
Priesthood, the, exempt from secular service, 17. *See also* Clergy
Primates, of the Greeks, 68, *584*
Primates, Roman, 271
Principalis, senior member of the Curia, 271
Privileges, of clergy, 127–130, 131–132; of ecclesiastical premises, 134
Probus, Emperor, 290, 293, 306, 310
Proceres, the, 205, 461
Proconsuls, 267
Procopius, 33, *582*
Prodehomes, the, 101, *587*
Prono, 125
Property, necessary to an Eorl, 11
Protection, in return for homage, 11, 431
Provinces, of France, incorrectly so-called, 472; legislative assemblies of, 472–473
Provincial Emperors, precursors of Barbarian dynasties and modern states, 307, 309
Provisions of the Barons, 215
Provisions of Oxford (1258), 246–247
Ptolemy, describes Britain, 260, *595*
Puch, Comes of North Burton, 511 *n.*
Pylagoras, the, 85, *586*

Quadi, the, 89, 293, *586*
Quintilius, Emperor, 305, *598*

Radechnights, the, 11, *579*. *See also* Sithcundmen
Radegast, 125
Radulphus Niger, 197, *594*
Rædboran, the, 388
Rægenhere (of East Anglia), 358
Rafn the Skald, 180
Rageman-Roll, the, 547, *608*
Ralph Flambard. *See* Flambard
Ramsey, History of, 135, *591*
Ranulf de Glanville, 186; description of Henry II, 197
Ranulf de Meschines, Earl of Chester, 375
Raoul, Count of Ivry, 102, *587*
Rapes, 51; in Sussex, 81, 82 *n.*
Ravenna, 75
Raymond VII, Count of Toulouse, 474, *606*
Recognitions. *See* Inquest
Recognitors, witnesses in civil cases, 200; qualifications of, 201–202, 208
Record, testimony of witnesses, 117; comes to mean parchment roll, 119; results of prevalence of oral testimony, 121
Rectors, of Provinces, 268
"Red Spears," the, 249
Redesmen, 246
Redwald, King of East Anglia, 357, 358, 489 *n.*
Reeffsting, remedial and inquisitorial court in Sweden, 91–92, *586*
Reeve, and four men summoned from each town, 243; of the township, 557. *See also* Gerefa
Reged, kingdom of, 318, 363, *599*
"Reges," the, 479
Regiam Majestatem, the, 544
Regnald of Northumbria, 499 *n.*
Regni, the, 265, *596*
Relationship, responsibilities of, 150. *See also* Kindred
Relief, payable on succession to land, 223, 385, 504; fixed by law, but increased, 505
Rents, paid to the King in kind, 234
Representation, of the Township, 66, 96, 243, 557–558; of hundreds, burghs and manors, 95–96, 243, 558; origins of, 96–97; early forms of, 256
Reuda, leader of the Scots, 351, 352 *n.*
Rhaetia, 305; Rhaetian Alps, 291
Rhainder, the, 53
Rhine, the river, 291, 310, 311
Rhydderch Hael. *See* Roderick the Munificent
Rhys (Welsh prince), 513
Rhywallon (Welsh prince), 513
Ribble, the river, 376
Richard de Anesty. *See* Anesty
Richard I, King of England, Assize of, regulates the election of Knights of the Hundred, 212, 242; 507 *n.*, 520 *n.*; cancels Treaty of Falaise, 537–539
Richard of Cirencester, 286 *n.*, 310, *597*
Richard, Earl of Clare, Earl of Pembroke (Strongbow), 310, 507 *n.*
Richelieu, Cardinal, 102, *587*
Ricos Hombres, the, 105, *588*
Rievaulx abbey, 528
Right, Writ of. *See* Writ of Right
Rimnild, Maiden, 324, *599*
Riparian soldiery, the, 290, *597*
Ripuarians, the (Franks), 420
Roads, Roman, 232, 279

Robert Bruce, Baron, 545 *n.*
Robert Fitz-Hamon, 95
Robert de Beaumont, Earl of Leicester, 209
Robert, Count of Mortain, 207
Robert, Earl of Rhuddlan, 503 *n.*
Robert (Bruce) I, King of Scots, 439 *n.*, 541, 544, 547, 548
Robert II, King of Scots, 439 *n.*, 541
Rochester, 136
Rochester, see of, 207
Roderick the Great, 60, 382, *584*
Roderick the Munificent, 318 *n.*, 363, 367 *n.*
Roger Bigod, 520 *n.*
Rollo, Duke of Normandy, 234
Roman Emperor, the, retains the legislative prerogative, 278–279; his prestige sought by Teutonic kings, 298–299, 300; accession due to military success, 304–307
Roman Empire, the, 259; political divisions of, 265–266; officials of, 266–268; 269; provincial organization of, 275–288; legislative prerogative vested in emperor, 278–279; legislation in answer to petition in, 279–280; organization of, continued by Teutonic rulers, 301; limitation or division of, 305–306; revolutions in, 306; one body politic, 414
Roman governors, impeachment of, 280
Roman institutions, survival of, in Normandy, 475
Romans, the, measurement of land among, 75
Rome, conquest of Gaul by, 17; 338, 372. *See also* Roman Empire, the
Romney, Lathe of, jury of, 82; Ordinances of, 97
Rothulf, Abbot of Abingdon, 142
Roturiers, the, 19, *580*
Roud, King of Theodford (Thetford), 344
Rouen, archbishopric of, 200
Rowena (Ronix), 33, 328
Roxburgh, 535
Ruim. *See* Thanet
Run, King of Strathclyde, 368
Runes, 109
Runnymede, 113, 245
Russia, 444

Sac and Soc, 64, 161, *584*
Sagas, of the North, 107, 355, 493
St Augustine's, Abbot of, 145
St Alban's, 243; burgesses of, 255
St Alban's, Abbot of, 255
St Andrew's, Bishop of, 138
St David's, 310
St Martin's church, Canterbury, 130
St Maur, 308 *n.*
St Peter's abbey, Bath, 144 *n.*
St Petersburg, 443
Sales, laws concerning, 154–156
Salic Franks, the, 8, *579*
Salic Law, the, 302, 420, 465 *n.*
Salisbury, 90 *n.*
Salogast, Salic judge, 301, *598*
Salop, exemption from Tithing in, 166
Samson, Archbishop, 356
Sanctuary, 134, 167
Sarmatia, 297
Saxnote, 8, 345, *579*
Saxonia, 383 *n.*, 399
Saxon Mirror, the, 20, *581*
Saxon shore, the, 318. *See also* Litus Saxonicum
Saxons, East, 30, 345
Saxons, Middle, 334
Saxons, the Old, traditions of, 19–20; 30; dispersed by Charlemagne, 32; allies of Carausius, 313; attack Britain, 318–322, 329–335; allied with Picts and Scots, 390; in the Carlovingian Empire, 420; of Bayeux, 474; Christian missionaries among, 480 *n.* *See also* Anglo-Saxons
Saxons, South, 30; their kingdom, 330–331
Saxons, West, 30, 334–337; their progress checked, 337. *See also* Saxons, the Old, Wessex
Saxony (Bernicia), 397, 402
Scabini, the, 71, 111, 454 *n.*, *585*. *See also* Echevins
Scandinavia, 73–74, 83–84; sagas of, 355; position of king in, 482, 483
Scandinavians, the, measurement of land among, 75; ravage Britain, 490. *See also* Northmen
Scheld, the river, 32
Scone, Moothill of, 112
Scota, Egyptian Princess, 540, *607*
Scotland, boundaries of, 138; bishops in, *ib.*; divided into Scotia and Lothian, 402; Lowlands of, 403; relation of, to Anglo-Norman England, 403–404, 535, 537–540; subjection of, to England, 522–530, 547–548; a feudal dependancy, 544; "kingdom of," how formed, 544–545; union achieved by force, 545–547
Scots, the, origin of, 350; more numerous in "Scotia" (Ireland), *ib.*; submit to the sons of Erc, *ib.*; mingle with Britons and Picts, 352–353; connected with Cumbria, 368; and Danes, 369; subject to the Northumbrian kings, 391; subdue the Picts, 394; accept Edward the Elder as lord, 396; capture Edinburgh, 398; 399; rebel against Canute, 400; acknowledge Canute's supremacy, 401; submit to Charlemagne, 407; receive Saxon refugees from the Normans, 482. *See also* Picts and Scots
Scots, King of the, pays homage for Lothian, 399; attends Great Council at London, *ib.*; attends Witenagemot, 515; Saxon, rather than Gaelic, 531; the legitimate representatives of the Saxon dynasty, 533–534, 537
Scula, Dane, 499 *n.*
Seal, the Great, 571–572
Secta, the, 214, 216
Seisin, 113, 114
Selden, John, 129, 501, *590*
Selgovae, the, 347

Selsea, 126; see of, 143
Sennachies, of the Gael, 324, *599*
Sept, the, 50, 58
Septimania (the Seven Provinces), 276–277, 278, 473
Serfs. *See* Theowas
Services, feudal, of the Ceorl, 14; 434
Severn, the river, 318 *n.*, 378, 379, 381
Severus, Septimius, the wall of, 294, 311–312
Shedding, 77, *585*; Court and Jury of, 98
Sherborne, bishopric of, 143; founded by Ina, 339
Sheriff, 148; empowered to act as King's Justiciar, 214; assists at Domesday survey, 222; inquest into exactions of, 240; 241, 244, 245; preserves King's Peace, 249
Sheriff's tourn, 37, 165 *n.*, *582*
Shire, the, 51; two classes of, 94
Shiremoot, the functions and composition of, 95–96, 556
Shrewsbury, 381
Sicily, legends of Arthur in, 332
Sigebert, King of Wessex, 575
Sigferth, Danish thane, 566 *n.*
Sigtuna, 108, *588*
Sigurd III, King of Norway, 107, *588*
Silchester, 489
Simon IV, Comte de Montfort, 473
Simon de Montfort, Earl of Leicester, 250, 251, 255
Simony, rife among Anglo-Saxons, 141
Sithcund men, 11, 24, 67, 165 *n.*, *579*
Siva, 125
Siward, Earl of Northumbria, 401, 573
Sixhynde men. *See* Sithcund men
Skiddaw, 377
Skioldingers (Scandinavian kings), 8
Slavery, 14, 23–24
Slavi (Slavonians), the, 432, 443, 452
Slavo-Wendic nation, the, 20, *581*
Snowdon, 382
Sodalitas, 272
Soke. *See* Sac and Soc
Sokemen, 11, 12, 52, *579*. *See also* Thanes, lesser
Solway, the, 373, 544
Somerset, 341
South Humbria. *See* Mercia
Sovereign, the, prerogative of, affected by the Inquest, 223; as supreme judge, 228, 238; his power transferred to counsellors and courts, 229–230; twofold judicial functions of, 230, 302; as conservator of the peace, 232; judicial eyres of, 233, 238; scattered property of, necessitates royal progresses, 234; in parliament, 239; divides government with the nation, 245; the supreme law-giver, 302; power of, increased by feudalism, 450. *See also* King
Spain, 18, 41, 286, 309, 317, 459
Sparhafoc, Bishop of London, 142–143
Spelman, Sir Henry, cited, 39, 501, *606*
"Spor," of cattle, 153
Stadthouse, courts held in, 111
Stallere, the, 505
Standard, battle of the, 348
Stanmore, battle of, 367
Stannary Parliament, or Court, the, 98, 112, *587*
State, supremacy of, 7
State, the, Teutonic, 50, 51; Anglo-Saxon, composition of, 51–53; British, 53–59
Staterus, King of the Scots, 540
States-General, the, of France, 469, 473, 477
Statutes, assented to by Echevins, 91
Stefnovitni, the, 115, *590*
Stephen, King of England, 196, 348
Stigand, Archbishop of Canterbury, 143
Stilicho, Roman General, 319–320, 354
Stirling, 535
Strath Clyde, bards of, 28, *581*; Druidical worship in, 125; princes of, 318, 515; part of Cumbria, 363, 373; Britons of, 365, 366–367, 391, 394, 396; submits to Edward the Elder, 367; after the Norman Conquest, 373, 402
Stratton, Adam de, 252
Stretwarde. *See* Watch and Ward
Strongbow. *See* Richard de Clare
Subreguli, 94
Succession, hereditary, 7–9; no absolute right by law, 504; extinction of the lord's discretionary power, 506
Suerre, the priest, 107, *588*
Suevi, the, 89, 320
Suffolk, 94
Suio-Goths, the, 41, 105–106, *583*
Suit, civil. *See* Civil Suit
Supremacy, of the Sovereign (early), over people, not territory, 510
Supreme Councils (*a*) advisory, (*b*) judicial, 90
Supreme Court of America, conflict of, with State Courts, 228–229
Surrey, 94, 492, 495
Sussex, kingdom of, 21, 81, 94, 228, 297, 495
Sutherland, 64, 396, *584*
Suthrige. *See* Surrey
Swanhilda, wife of Charles Martel, 447
Sweden, judicial and legislative systems in, 91–92; provinces of, 91 *n.*; methods of election in, 105–106
Sweyne Forkbeard, King of Denmark, 487, 498
Swilling-lands, 509, *607*
Sylla (Lucius Cornelius Sulla), 288, *597*
Symbols, land conveyed by, 113, 114; Courts summoned by, 114–115
Synods, ecclesiastical, provincial and national, 139; held concurrently with secular councils, 139–140, 559; a bond of union, 559

Tacitus, cited, 69–70, 264, 292, 306
Taeawgion, 53. *See also* Villeins, Villeinage
Talgarth, 388 *n.*
Taliesin, 30, 263
Talorgan, King of the Picts, 392
Tamar, the river, 340, 342
Tamerlane (Timur), 50, *583*
Tanais, the river (Don), 108, *588*

Tanaist, the, 57, 368, 372
Tartars, the, political organization of, 49–50
Tassilo I, Duke of the Bavarians, 447
Tassilo III, Duke of the Bavarians, 446, 447–448, 451, 455*n.*, 470*n.*, 510*n.*, 511*n.*, 535*n.*
Tautomede, Duke of Dacia Ripensis, 297
Taxation, assessed by inquest of personal property, 224–225; in the Roman Empire, 283
Team, or generation, 154, *592*
Team. *See* Toll
Tectosages, the, 87, 88, *586*
Tees, the river, 134, 356, 499
Teisbantyle, the, 55
Tenant-right, 502
Teothung, 162, 164. *See also* Tithing
Terra Cumbrorum, the, part of Cumbria, 363
Tetrarchs, the (in Galatia), 87
Tetricus, Emperor, 306
Teutonic State, the. *See* State
Teutons, sprang from the East, 31; land tenure among, 56, 59, 60–61; no national jurisdiction among, 88–89
Teviotdale, 138, 366
Textus Roffensis, the, cited, 130
Teyrnedd-y-Gwgledd, 346
Thames, the river, 334
Thaneborn, 9. *See also* Eorls
Thanes, qualifications for, 24; twelve selected in each Hundred to present crimes, 80; 96, 177; compared with a Jury, 203; granted military benefices, 502; known as knights, 503. *See also* King's Thane
Thanes, lesser, 11. *See also* Sokemen
Thanet, 326
Thannadars (Hindu), 164
Theel-land, 61, 62, *584*
Theft, punishment of, 169, 172
Theodo, son of Tassilo of Bavaria, 448
Theodore of Tarsus, Archbishop of Canterbury, 131, *591*
Theodoric, King of the Ostrogoths, Edict of, 34, *582*; 144, 298–299, 429, 434, *597*
Theodosian Code, the, 132, 272, 276, 287, 419, *591*
Theodosius, Count, father of the Emperor Theodosius, 315, 319, 351
Theodosius, Emperor, 280*n.*, 281, 282*n.*, 317
Theophylact, Bishop of Tuderta, 140
Theowas (serfs), 9; destitute of political rights, 16; origin of, 23–24; 154
Theowet (slavery), 165
Theseus, King of Athens, 86
Thetford, 83*n.*, 344
Thirlage, 23, *581*
Thomas Becket, Archbishop of Canterbury, 197
Thong-castle, 328, *600*
Thorney Island, 188
Thrace, 87, 306
Thule (in Thrace), 87
Thuringians, the, 19
Thurkettle (Thurcytel), Abbot of Croyland, 145, *592*
Tiberius, Emperor, 295
Tiers Etat, the, 473, 474
Timariots of the Ottomans, 295*n.*
Tingitania, 265
Tir Cyfrith, 58
Tir Gweltyawg, 58
Tithes, 129
Tithing, the, 154, 155; and frankpledge, 158; supposed origin of, 160; supplies compurgators, 178–179. *See also* Frankpledge
Tithing man, the, 249, 557
Titus, Emperor, 295
Toft, the, 74, *585*
Toledo, 3, 299
Tolistobogii, the, 87, *586*
Toll, 64, 161
Tolosans, 470
Torphin, son of Harold of Norway, 545, 548, *608*
Torture, 191, 193
Tostig, Earl of Northumbria, 516*n.*
Tothill Fields, 188
Toulouse, 277; assembly at, 278, *596*; 419*n.*; the Council of, 474
Tourn, the sheriff's. *See* Sheriff
Tournay, 419*n.*
Township, the, primary element in the Anglo-Saxon community, 51; later called manor, *ib.*; subject to a superior lord, 52; British form of, 53–54; the Norman, 62; Courts of, 63–64; representation of, 66; rights of inhabitants of, *ib.*; compared with Salic villa, 66–67; formed from two communities, 67; created from common land, 130; fined for murder, 151; 154; responsible for crimes of inhabitants, 166–167; and the justices in Eyre, 243; represented in courts by four men and the reeve, 557; *584*
Trades. *See* Colleges of Operatives
Trahern, British prince, 313
Trajan, Emperor, 294*n.*
Treason, High, 194
Treasury, the King's, 117
Trefs (hamlets), 53, 54
Trent, the river, 242, 358*n.*
Trèves, 265, 288, 292, 297, 305, 317
Triads, of Dyvnwal Moelmud, the, 24, 28–30, 261, 386
Trial, of criminals, 175–179; of civil cases, 179, 181–182; by the country, 198; by Inquest of Witnesses, 216, 219. *See also* Battle, Jury, etc.
Trinobantes, the, 289, *597*
Trinoda Necessitas, the, 127, 129
Tripoli, assembly at, 286
Triumvirate, the, 289, *597*
Trocmi, the, 87, *586*
Troy, identified with Asgard, 109; and origin of Britons, 263
Troyes and settlement of Franks, 292
Trumwine, Bishop of the Picts, 393
Tufa, Roman Standard, 29
Tungerefa. *See* Gerefa

Tunginus (gravio), the, 66, 151, *584*
Tungrians, the, 294
Turpin, Archbishop, 333
Tweed, the river, 497 *n.*, 498
Twelfhynde men. *See* Eorls
Twihynde men. *See* Ceorls
Twyford (on the Alne), Council at, 365
Tyddin, the, 53, *584*
Tyne, the river, 134, 347, 355
Tynwald Court, the, 99, *587*
Tynwald hill, the, 112
Tyrants, Roman, 304–306, 307, 310
Tyrrhenian Commonwealth, the, 85

Uchtred, Earl of Northumbria, 517
Uffa. *See* Offa
Uffingas, the dynasty of, 344
Ulf, Bishop of Dorchester, 142, 143
United States of America, 229
Unnust, King of the Picts, 366, 394
Upland, law of, 179
Upsala, 3
Urbicus, Lollius, 294
Urien, ruler in Bernicia, 356
Uscingas, the. *See* Oiscingas
Uther Pendragon, 354, 377

Valencia, 422 *n.*
Valentia, province of Roman Britain, 286, 345–346
Valentinian, Emperor, 280 *n.*, 281 *n.*, 282 *n.*, 291 *n.*, 295, 315
Valerian, Emperor, 305, *598*
Valerianus, Emperor, 306
Vandals, the, 293; invade Britain, 320; 505
Vascongados, constitution of the, 112, *589*
Vase of Soissons, the, 301, 455, *598*
Vassalage, voluntary acceptance of, 18; by conquest, 19; British and Anglo-Saxon, 23
Vassals ("Men"), 11–12; British, 23
Vassus, the, 32, 431, 437, 452, 457, *582*. *See also* Antrustion, Vassals
Vavassours, 15, *580*
Vecturiones, the, 349
Vehm Gericht, the, 116 *n.*
Vendic tribes, their beliefs absorbed by Northmen, 125, *590*
Veneti, the, 316
Venta Icenorum (Caister), 344, *601*
Vercingetorix, 27, 427
Verneuil, Council of, 565 *n.*
Verulamium, 125, 345, *590*
Vespasiana, 286
Veterans, Roman, appropriate lands, 295; their sons obliged to serve, 296
Vicecomes, the, 204, *594*
Vicomté, corresponds to English Hundred, 102
Victorina, 306, *598*
Viennensis, 277 *n.*
Villa, 66; denominates a district, 162; *584*
Villeinage, voluntary, 18; Celtic, 53
Villeins (Villanus), among the Britons, 54, 58. *See* Ceorls
Vintaineers, military and ministerial authority of, 100
Vintains, division of Hundred in Guernsey and Jersey, 100
Visigoths, the, customs of, 18; their methods of election, 104; 264 *n.*, 268 *n.*
Visne, the, 152, *592*
Vortigern, King of Kent, 326, 327, 489

Wægdæg, son of Woden, 8, *579*
Wager of Law, 177, 215
Walafrid Strabo, 163 *n.*
Wales, North, disunion in, due to system of land tenure, and to physical features of country, 60, 379; legislative assembly in, 96–97; the Church in, 137; Maximus in, 318, 339 *n.*; the Britons in, 378; early chronicles of, 379; sends bishops to Augustine's conference, 379–380; advance of the Saxons in, 380–385; division into three kingdoms, 382; vassals of Alfred in, 383, 385–386; under Edward the Confessor, 512–513; subject to English kings by feudal law, 514
Wales, West, 339 *n.*, 515, 526, *607*. *See also* Cornwall, Devon
Wallace, Sir William, 547, 548
Wallenses, the, of Strathclyde, 374
Wallingford, 209
Wallingford, John of, 528, *607*
Waltheof I, Earl of Northumbria, 517
Waltheof II, Earl of Northumbria, 532
Wapentake, 41, 51; origin of name, 78–79. *See also* Hundred
War, due to lack of common jurisdiction, 149
Warenne, the honour of, 210, *594*
Wardreeve, the, 164
Warkesworth Wapentake, Inquest of, 98
Warranty, 154
Warrens, and Warreners, 245
Watch and Ward, 164, 248, 250
Watling Street, 232 *n.*
Wealh, the, 21, 22–23, 388, 495, *581*. *See also* Britons
Wealh Gerefa, the, 389
Wealhcynn, the, 341, 387–388, 495
Weaponshaw, the, of the Franks, 454
Wecta, son of Woden, 8, *579*
Wedale, 333
Wells, abbey of, 340 *n.*
Welsh language, the. *See* Cymric
Welsh people, the. *See* Britons, Cymri
Wends (Vendic tribes), *590*
Wensum, the, 344
Were (or blood-fine), 10; equivalent to modern damages, 25; 158, 165–169
Wergild, 10
Werini, the, 420
Wertermere, 396
Weser, the river, 32
Wessex, the kingdom of, 11, 15, 36, 37, 38, 94, 140, 231, 235, 331, 337, 338, 341, 342, 358, 388, 412; succession in, 484; acquires supremacy in England, 490; considered as including Kent, Surrey, and Sussex, 495; 499, 551, 558
West Seaxnalage, 39. *See also* Wessex

Westmere, principality of, 363, 371 *n.*, 396 *n.*
Westminster, 235, 247, 252, 253, 529
Westminster hall, 4, 204, 547, *578*
Westminster, statute of, 219–220
Westmorland, 363, 376
Westphalia, 116 *n.*
Whitby, 40
Whithern (Candida Casa), 138
Whitsuntide, King's Court held at, 232, 235
Wight, Isle of, 30, 126; taken by Saxons, 331
Wiglaf, King of Mercia, 127 *n.*, 492, 511
Wihtgar, nephew of Cerdic, 331
Wihtgils, father of Hengist, 328
Wihtlæg, son of Woden, 8, *579*
Wihtræd, King of Kent, 11, 36, 126, 519 *n.*, *579*
Wihtware, the, men of Wight, 30, *582*
William the Conqueror, King of England, confirms laws of Edward the Confessor, 43–44; calls a legislative assembly, 97; continues *murdrum*, 151–152; imposes oath of allegiance, 165; regulates trial by battle, 182–183; retains Anglo-Saxon jurisprudence and institutions, 195, 573; introduces witnesses in appeals of Englishmen against Normans, 209; effects of his policy, 226; administers justice, 235; institutes new form of council and wears his crown 3 times a year, *ib.*; absent from England, 236; at war with Scots, 373; grants Cumberland to Ranulf de Meschines, 373; 486 *n.*, 498, 515; relations with Exeter, 554; 574; laws of, 176
William II, King of England, 183, 376, 399 *n.*, 525, 526, 530
William, son of Henry I, 530 *n.*, 537 *n.*
William, Bishop of London, 143
William Briwere, 246
William, Count of Eu, 183
William Fitz-Osbern, Earl of Hereford, 236
William of Malmesbury, cited, 138, 235, 264, 337, 355
William Mauduit, 507 *n.*
William the Lion, King of Scots, 241, 374 *n.*, 398 *n.*, 533–535, 537–538, 539 *n.*, 548
William of Warenne, Earl of Surrey, 530 *n.*
Wilton, 129
Wiltshire, 336, 341
Winchcombe, 553 *n.*; abbey of, 142
Winchelcombshire, 94, *587*
Winchelsea, hundred of, 83 *n.*, 178
Winchester, 176 *n.*; King's Treasury at, 221; 223, 234–235, 238, 252, 505, 529, 553, 565, 567
Winchester, Bishop of, 36, 244
Winchester, see of, 143
Winchester, statute of, 164, 253
Windsor, Great Council at, 242
Wini, Bishop of London, 141, *592*
Winton, statute of. *See* Winchester, statute of
Winwaloe, St, 309 *n.*
Wite, 23, 168. *See also* Fine, Were
Wite Theow, the, 23
Witenagemot, the, 34; accepts laws of Ina, 36; under Alfred, 37; 42; power of alienating common land, 130; meets concurrently with ecclesiastical synods, 139–140; 207, 235; attended by British chiefs who are subject to its jurisdiction, 386; makes a compact with Britons in Devon, 388; its judicial functions with regard to royal succession, 484–485, 487; composition of, 515, 559; 551; not coercive over the whole realm, 560; legislation its least important function, 562; royal grants made in, *ib.*; supreme civil and criminal court, 563; a political congress of the Empire, 563–564; agrees to exact Danegeld, 564; its proceedings bound only those states that consented to them, 564–565; a shire court for the district in which it met, and a landgemot for the kingdom, 565; land qualification of its members, 565–566; formed from various different laws and usages, 567–568; summoned by Norman kings, 573
Witichind (Widukind, Witikind), Chronicles, 19, *580*
Witnesses, 204–206
Woden, 8, 324, 536 *n.*, 579
Wodnesbeorg (Wodensdike), battle of, 336
Women, political status of, 261
Worcester, 90 *n.*, 136, 553 *n.*
Worcester, the church of, 184, 591
Worcestershire, 137 *n.*
Work-lands, 509, *606*
World-Thane, 130, 134
Writ de odio et atiâ, 217, *595*
Writ de terris liberandis, 507
Writ of Distringas, 148
Writ of Right, 185–186, 188; Norman, 200
Writ of Right Close, 232
Writ of Summons, 430 *n.*, 463 *n.*
Wuldham, 52 *n.*
Wulemar, Frisian lawgiver, 33, *582*
Wulfere, King of Mercia, 141
Wulnoth, father of Godwin, 521
Wulstan, Bishop of Worcester, 184
Wye, the river, 318 *n.*, 381

Yare, the river, 344
Ygdrasil, the Ash, 109, *589*
Ynesuuitrin (Ynys Wydrin), 123, *590*
Ynglingas (Scandinavian Kings), 8
Ynyr, Armorican prince, 338
Ynys Wydrin. *See* Ynesuuitrin
York, 235, 312, 313, 354, 356, 360, 362, 396, 498, 553; parliament at, 562
York, Archbishop of, 537
York, province of, 132, 356 *n.*
York, see of, extent of, 138, 143; supremacy of, 491
Yorkshire, 94, 134
Ystradwy, commot of, 563

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